94th Congress } COMMITTEE PRINT
2d Session }

LEGISLATIVE HISTORY

OF THE

EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

Public Law 93–406

PREPARED BY THE

SUBCOMMITTEE ON LABOR

OF THE

COMMITTEE ON LABOR AND PUBLIC WELFARE

UNITED STATES SENATE

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FOREWORD

Industrial pensions began in America more than 100 years ago and in the last 25 years, they have enjoyed enormous growth. Today, more than 30 million American workers are relying on private pension and welfare plans as a major source of economic security in old age. The assets of private pension arrangements increased from $2.4 billion in 1940 to more than $150 billion in 1975 making these funds one of the largest sources of private capital in the economy. These changes have radically altered the retirement security expectations of the American people.

But for the most part, this phenomenal growth was largely unregulated. While the absence of substantive requirements helped promote growth of the private system, the resulting plans set up difficult and sometimes insurmountable obstacles to plan participants.

Passage of this legislation is the end product of years of study and development by the Committee on Labor and Public Welfare. For their work in this effort, I wish to extend a special thanks to all of my colleagues on the Committee whose contributions and support made this landmark reform possible. A particular tribute must be reserved for the distinguished ranking minority member of the Committee (Mr. Javits) whose efforts dating back to 1967 awakened Congress to the need for comprehensive reform.

The Employee Retirement Income Security Act responded to the recommendations of the Senate study and to the objectives of a broad consensus for comprehensive reform. The new rules reflect a careful balance of incentives and controls designed by Congress to improve the equitable character of private plans while encouraging their future growth and development.

Implementation of the ERISA standards will demand an effective administration with a unique understanding of the impact of its requirements. To aid those responsible for its administration, I have asked the committee staff to compile this legislative history with the assistance of the Department of Labor under whose direction the indexes were prepared.

HARRISON A. WILLIAMS, Jr.,
Chairman.

ACKNOWLEDGMENT

The indexes for this legislative history of the Employee Retirement Income Security Act of 1974 and the Explanatory Notes for Using the Indexes were prepared by staff of the U.S. Department of Labor at the direction of Paul J. Fasser, Jr., Assistant Secretary of Labor for Labor-Management Relations. For the dedication of that staff to the project, and for the help of other employees who contributed significantly to the effort, I wish to express my appreciation, and my particular thanks to the following: Paul R. Antsen, Richard D. Ferrone (of the Office of the Solicitor), Neilda C. Lee, Edwin A. Silver, and Ellan H. Spring, who structured and compiled the indexes; Bruce M. Leet, who helped to plan and start the project; Richard T. Wood, who kept a chronicle of pension reform legislation; and John S. Hunter, who guided the project.

HARRISON A. WILLIAMS, Jr., *Chairman.*

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Explanatory Notes for Using the Indexes

Because indexing techniques vary according to such factors as the purpose to be served, the nature of the subject matter indexed, and the conceptions of persons who do the indexing, the following explanatory notes on the indexes published herein should be helpful to their users.

The indexes were developed to facilitate use of the basic legislative documents in assisting to determine the Congressional intent underlying various provisions of the Employee Retirement Income Security Act of 1974 (ERISA). This orientation and the complex nature of the legislation resulted in two basic design features. First, the index headings are fashioned primarily to describe subjects or concepts rather than specific legislative provisions or key words. This was necessary to encompass the wide range of proposals, discussions, and modifications leading to the provisions enacted in ERISA. Thus, it may be necessary on occasion for the index user to relate a provision of ERISA or of a forerunner bill having a certain heading to an index heading stated a different way.

The second basic design feature is that subjects or concepts generally are referenced to single index headings. In other words, where multiple index headings for a particular subject could be used, only one heading is used for giving page references. Thus, once the user determines that he has found a heading covering his subject, he need not be concerned that some other heading might also cover the subject with possibly a difference in the page references. The "see" cross references are used to help in finding the correct heading. The "see also" cross references are used to indicate that there is a closely related heading.

Other points on the approach and techniques used in the indexes follow.

1. There are nine basic indexes covering broad subject areas, as follow:

Definitions
Reporting and Disclosure
Participation and Vesting
Funding
Fiduciary Responsibility
Termination Insurance
Enforcement
Internal Revenue Code
Miscellaneous

2. The documents indexed are limited to bills, reports, the "bill" print of broad amendments such as those in the nature of a substitute, and floor debates. At the end of these explanatory notes is a list of such documents printed in this legislative history. The list is annotated as to several documents which, in whole or in part, are not indexed for the purpose of avoiding duplication. For example, H.R. 4200 as passed by the Senate is not indexed because the same legislation became the Senate amendment to H.R. 2. Also, for example, the substitute bill printed in the Conference Report is not indexed because of its close similarity to the final law. In addition, prints in committee reports of the Welfare and Pension Plans Disclosure Act as it would be changed are not indexed.

While certain substantive amendments are not indexed as to the "bill" print, they are indexed as to the floor consideration on them. Technical, clerical, and conforming changes generally are not indexed where they are not described in the documents as to their subject matter.

3. The index titled Internal Revenue Code covers only matters related to the Internal Revenue Code of 1954, as amended, which do not fall within one of the other indexes.

4. The index titled Definitions covers definitions regardless of the subject area to which they pertain. As a rule, there are no cross references from the other indexes to the Definitions index. Also, definitions which seemed to have been used solely for convenience in drafting are omitted. An example would be where "Secretary" is defined to mean "Secretary of Labor." Another example would be where a term is defined solely for purposes of the provision immediately preceding the definition.

5. Certain index headings include page references only where there is broad treatment or application of the matter in the documents. These headings are:

Effective dates;
Need for . . . ;
Plans covered;
Previous law;
Regulations/rules, general authority.

Instances of narrow treatment or application, to the extent they occur in the documents, generally are not indexed separately, but may be found within the page references given under the index heading covering the particular subject to which they pertain. For example, a page reference to ERISA section 505, regarding authority to issue regulations under Title I, is included under the "regulations" main heading in the Reporting and Disclosure index, Participation and Vesting index, etc.; specific authority to issue regulations regarding the filing of annual reports may be found within the page references given under "Annual report or return—filing requirements" in the Reporting and Disclosure index.

6. The index heading "Previous law" refers to discussions or statements about the status of law before ERISA. Therefore, the refer-

ences include discussions addressed in terms of current law, since the discussions took place before enactment of ERISA.

7. The word "participants" in the indexes usually means "participants and beneficiaries."

Finally, it should be noted that any interpretation of legislative documents which is inherent or implied in the indexes or these explanatory notes is not to be considered as the official view of the U.S. Department of Labor.

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[2] Not indexed to avoid duplication with Title I in item (28).
[3] The substitute bill is not indexed to avoid duplication with item (32).

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[From the Congressional Record—Senate, Sept. 18, 1973]

RETIREMENT INCOME SECURITY FOR EMPLOYEES ACT

The PRESIDING OFFICER (Mr. HATHAWAY). Under the previous order, the Senate will now proceed to the consideration of the unfinished business, S. 4, which the clerk will state.

The assistant legislative clerk read as follows:

S. 4, to strengthen and improve the protections and interests of participants and beneficiaries of employee pension and welfare benefit plans.

The Senate resumed the consideration of the bill.

The PRESIDING OFFICER. Who yields time?

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum and ask unanimous consent that the time be charged to neither side.

The PRESIDING OFFICER. Without objection, it is so ordered, and the clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. WILLIAMS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. (Mr. MCINTYRE). Without objection, it is so ordered.

Debate on the bill is limited to 6 hours to be equally divided by the majority and minority leaders or their designees; with 1 hour on any amendment in the first degree, except an amendment to be offered by the Senator from South Carolina (Mr. Thurmond), on which there shall be 2 hours; and that debate shall be limited to one-half hour on any amendment in the second degree, debatable motion, or appeal, to be equally divided and controlled by the mover of such and the manager of the bill.

Mr. WILLIAMS. Mr. President, I ask unanimous consent that the following staff members from the Committee on Labor and Public Welfare be accorded the privilege of the floor during the consideration of the bill.

Laurence N. Woodworth, Arthur S. Fefferman, Herbert L. Chabot, Robert A. Warden, Robert A. Blum, Howard J. Silverstone, James Billinger, and Richard Fay.

The PRESIDING OFFICER. Without objection, it is so ordered.

Who yields time?

Mr. CURTIS. Mr. President, reserving the right to object—and I shall not object—I wonder if it was the plan to proceed with the proposed legislation until the chairman of the Committee on Finance (Mr. Long) was here to participate in the debate. It was my understanding, when I agreed to the limitation, that I was agreeing to a limitation on the bill reported by the Committee on Finance. I did not know that the agreement related to any other bill until that fact appeared in print in the Record.

I think a jurisdictional question is involved. I anticipate that everything will be ironed out properly and that we will end up with a good bill. I do not wish to imply any irregularities or anything irregular about the Committee on Labor and Public Welfare. I simply believe that this is a matter of great import to the Committee on Finance. I had assumed that we would wait until the chairman was here.

Mr. GRIFFIN. Mr. President, would the distinguished Senator from New Jersey (Mr. Williams), the manager of the bill, agree to a reasonable delay?

Mr. WILLIAMS. Let me say, first of all, that I think the procedure we are about to pursue now has certainly been cleared with the distinguished chairman of the Committee on Finance. He was a part of the procedure that we shall describe in a moment. I think it appropriate, however, that the chairman of the subcommittee which gave special consideration to pension legislation comment.

Mr. NELSON. I do not believe the chairman of the Finance Committee would have any objection to our proceeding. But if the distinguished Senator from Nebraska desires to have a quorum call, I have no objection.

Mr. CURTIS. Further reserving the right to object, it is my understanding that there was a conference and that certain compromises were entered into. I have had a report on that. However, I was not present and have not seen the language. It is my understanding that the language of the amendment, which is really a series of amendments that incorporates the compromise that was entered into, will be here in a few moments; it is not here now.

I take this occasion to express the hope that the leadership will work out an arrangement or an understanding that we will not have a final vote today, even though the 6 hours may be fully used—or it may be that some time will be yielded back—and that amendments may be offered tomorrow. I know of no amendments to be offered.

I have every reason to believe that the greater part, or perhaps all, of the compromise language will be accepted, even though it may not be to my liking, and will be enacted and not vigorously opposed.

We have some very far-reaching legislation before us, so I do think that we ought to have at least 1 day to examine the newly drafted language.

Mr. JAVITS. Mr. President, will the Senator from New Jersey yield?

Mr. WILLIAMS. I yield.

Mr. JAVITS. Mr. President, my name is on the bill. I have had a great deal to do with it for a long period of years. I see nothing whatever unreasonable in the suggestion of the Senator from Nebraska.

One thing that does trouble me is the feeling that he gave unanimous consent to the bill coming out of the Finance Committee. I was extremely clear on that, and I think the leadership was, too. I hope very much that he will examine the record because I think he will find that all along it was the plan to bring up S. 4.

Finally, just before I left for Europe, we had a very fine meeting with the Senator from Texas (Mr. Bentsen), the Senator from Utah (Mr. Bennett), and the Senator from Louisiana (Mr. Long). I think matters have come into agreement, and I think the Senator will find—and I certainly will join in giving him that assurance—that as we go

along, it is very likely—in fact, it is quite possible—that the matter will not be closed out today. We will have 1 day to study what has been added since last Friday, and amendments can be offered tomorrow as conveniently and as efficiently as they can be today.

Mr. CURTIS. Mr. President, further reserving the right to object, may I inquire what the procedure will be, what bill will be before the Senate, and in what manner the Finance Committee's bill will be brought before the Senate?

Mr. WILLIAMS. Mr. President, the procedure that has been worked out by the Committee on Labor and Public Welfare and the Finance Committee, and brought to the Senate, is that the pending business, S. 4, will be discussed. I will discuss it, and I am sure Senator Javits will do so.

Following that, it is the intention of the Senator from Wisconsin (Mr. Nelson) to discuss the Finance Committee's reported bill and at that point offer the amendment, which embodies the compromises that have been arrived at between the two committees, and offer that compromise as a substitute for S. 4.

Mr. CURTIS. Is it the plan to offer the Finance Committee's revised language as a substitute bill? It would still be under the title of S. 4. Would that be offered in a manner that it would be considered as a complete bill and subject to amendment?

Mr. WILLIAMS. That is correct.

Mr. CURTIS. As original text?

Mr. WILLIAMS. As original text and subject to amendment.

Mr. CURTIS. So that any amendment to the Finance Committee bill will be in order and will not have the handicap of being an amendment in the second or third degree?

Mr. WILLIAMS. That is exactly the way it will be.

Mr. CURTIS. And is it the understanding that part of the compromise is that the Committee on Labor and Public Welfare will not be resisting the amendment?

Mr. WILLIAMS. The amendment that Senator Nelson will offer is the compromise that was worked out with the two committees. That amendment includes the bulk of the substance of S. 4. All this will be explained as we proceed.

I yield to the Senator from West Virginia.

Mr. ROBERT C. BYRD. I only wanted to say to the distinguished Senator that any substitute, whether offered by the committee or offered by any Senator from the floor, is considered as original text and open to amendment in two degrees.

I ask the Chair whether I am correct.

The PRESIDING OFFICER. Any substitute for the bill is considered as original text; that is correct.

Mr. CURTIS. Do we have assurance that when this new amendment is considered as original language, there will be a right to offer amendments to it tomorrow, should the occasion arise? I do not know that such an occasion will arise, but I just believe that is the better way to legislate, inasmuch as this bill contains 227 pages. While the various Members are familiar with the substance of it, this is the first time we have seen it put together as an individual bill.

I anticipate no specific objection to it, but I just believe that the reputation and credibility of the Senate will be maintained if we at least have 1 day before the curtain is drawn on all amendments, in case we use all the time today or yield it back.

Mr. HANSEN. Mr. President, will the Senator from New Jersey yield to me?

Mr. CURTIS. Mr. President, could I have an understanding on this?

The PRESIDING OFFICER. The Chair states that a unanimous consent request is pending as to whether certain staff members can have the privilege of the floor, and the Chair would like to rule on that.

Mr. NELSON. I have a request, Mr. President.

Mr. WILLIAMS. Mr. President, could that be incorporated with another request of the Senator from Wisconsin for the Finance Committee staff members?

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. NELSON. Mr. President, I ask unanimous consent that Laurence N. Woodworth, Arthur Fefferman, Herbert L. Chabot, Robert A. Warden, Robert A. Blum, Howard J. Silverstone, James Billinger, of the Joint Committee on Taxation, and Mr. Richard Fay, of my staff, Mr. David Allen, of Senator Bentsen's staff, and Mrs. Marilyn Kester, of Senator Hansen's staff, be permitted the privilege of the floor during the course of the consideration of this measure.

The PRESIDING OFFICER. Is there objection?

Mr. GRIFFIN. Mr. President, reserving the right to object, I ask that the name of David Clinton, of my staff, also be added.

Mr. THURMOND. Mr. President, I ask unanimous consent that the names of Mr. Stanley Hackett and Mr. Raymond Sifly be added to the list

Mr. HANSEN. Mr. President, reserving the right to object—and I shall not object—I want to point out that, as the Senator from Nebraska has already said, many Members have not had an opportunity to read the measure we are now considering. It is a very important bill. It deserves our studied attention.

I hope the leadership will be mindful of the fact that it will take a little while for Members to understand the issues involved, to raise questions that deserve answers. With that in mind, it is my hope that there might at least be no votes until after, say, 2 o'clock this afternoon.

Senator Roth called this morning. He regrets very much that a funeral prevents his presence on the floor this morning. He will be here at 2 p.m.

I ask the leadership whether it might be understood that there will be no votes until, say, after 2 p.m.

Mr. WILLIAMS. Mr. President, I yield to the Senator from West Virginia.

Mr. ROBERT C. BYRD. May we have a ruling from the Chair?

The PRESIDING OFFICER. Is there objection to the unanimous-consent request?

Mr. CURTIS. Mr. President, reserving the right to object, I would like to know whether or not we have an understanding that amendments may be offered tomorrow, with full opportunity to debate them.

Mr. Robert C. Byrd. Would the Senator allow the minor requests to be acted on? Then there will be a response. The request is just for attachés to be on the floor. Would the Senator allow that?

Mr. Curtis. All right.

The Presiding Officer. Is there objection?

Mr. Thurmond. Mr. President, reserving the right to object, I expect to offer an amendment unless the compromise amendment goes further and covers the points I have in my amendment. I simply want the small businessmen to be on an equal basis with big businessmen. As I understand, the compromise amendment does not do that.

I am going to object to anything unless it is clear that we have the right to offer this amendment to the compromise amendment or, if that is considered the original bill, to the original bill, at the proper time; and I would like it understood that I will be notified to be here if any other agreements are to be entered into that might affect my position.

The Presiding Officer. Is there objection to the unanimous-consent request? The Chair hears none, and it is so ordered.

Mr. Williams. Mr. President, I yield to the Senator from West Virginia.

Mr. Griffin. Mr. President, I ask unanimous consent that the time now being consumed and having been consumed up to now not be charged against the 6 hours under the unanimous-consent agreement.

The Presiding Officer. Is there objection? The Chair hears none, and it is so ordered.

Several Senators addressed the Chair.

The Presiding Officer. The Senator from New Jersey has the floor.

Mr. Williams. I yield to the Senator from West Virginia.

Mr. Robert C. Byrd. Mr. President, may I say that, of course, if any Senator wishes to offer an amendment to this bill on tomorrow, I am confident that arrangements can and will be made to accommodate that Senator. There is a limitation of time on the bill of 6 hours, which is ample, we think. If there were a disposition on the part of the Senate to complete the bill today I think that could be done, depending on how many amendments would be offered. There is a time limitation on amendments.

An amendment by the Senator from South Carolina (Mr. Thurmond) has been provided for and 2 hours have been allowed for debate on the amendment.

I think at the close of today we will be in a much better position to ascertain the needs of tomorrow. I am confident that there is a disposition on both sides of the aisle to work as long as we can to accomplish as much as we can and then to put over until tomorrow any final votes, giving Senators an opportunity to look over the bill overnight and to look over the actions of the Senate today and then to decide if they want to offer amendments tomorrow.

It also is the hope of the leadership that we can dispose of this bill as early tomorrow as possible so the Senate can take up the military procurement bill.

Mr. Griffin. Mr. President, will the Senator yield?

Mr. Williams. I yield.

Mr. Griffin. Mr. President, I would like to add that the time of 6 hours under the bill is under the control of the majority leader and the minority leader. Speaking for the minority leader and myself, we will be sure that in the allocation of that 3 hours the wishes of the Senator from Nebraska and others will be carefully observed. We will not yield all of that time today as long as the Senator from Nebraska is of the opinion that amendments should go over until tomorrow. Of course, that can easily be taken care of by the fact that any amendment that is offered will take an hour to debate, and if there is a vote it will take additional time. So I do not think there will be any difficulty in assuring that the bill will not be completed today.

Several Senators addressed the Chair.

The Presiding Officer. The Senator from New Jersey has the floor.

Mr. Williams. I yield to the Senator from South Carolina.

Mr. Thurmond. Mr. President, there will be no desire on my part to slow the bill: we are ready to vote today; we are ready to vote now if the Senate wishes to vote. I wanted the procedure to be clearly understood so we could have a clear-cut debate on the points embodied in the amendment I shall offer to the bill.

Mr. Williams. I yield to the Senator from Wisconsin.

Mr. Nelson. Mr. President, I do not believe we can complete this bill today under any circumstances. The amendment that the Senator from Nebraska referred to is only the first amendment of two major amendments to be offered.

The first amendment is 227 pages long. There is no way for any Member who has not had his staff working on this legislation to know where to offer appropriate amendments without having it available for some time. The second amendment responds to the issue raised by the Senator from Nebraska. The second amendment embodies all of the tax provisions dealt with in the Committee on Finance bill S. 1179 which are not in S. 4. The second amendment will be over 70 pages long.

This is a complicated bill. Members will have to have these amendments in their hands so they can review the provisions and find the place for amendment if they desire to amend the bill.

I have two amendments. I will be offering two major amendments on behalf of the Senate Finance Committee, but I have two amendments of my own because I disagree with the decision of the Committee on Finance.

My two amendments are critically important and they deal with the question raised by the Senator from South Carolina (Mr. Thurmond). Those two amendments should be voted on tomorrow. There is no way for Members to familiarize themselves with the issues involved during the course of this day.

The Senator from South Carolina has an amendment involving a very important principle in which he argues that closely held corporations and professional corporations, should be dealt on an equal tax basis for pensions, compared with General Motors, ITT, et cetera. I intend to offer an amendment which would require that large corporations, small corporations, professional corporations, be treated precisely alike; however, my amendment will place a limitation that there be a limit. In the present law and in this bill there is no practical limit

on major corporations. I think there must be some limit on the tax-deductible pensions provided to high-paid corporate executives.

My proposal would provide that there shall be a limit on tax-deductible dollars that can be set aside for pensions not to exceed 75 percent of the last highest 3 years of earnings based on a $60,000 maximum income: that is to say, no one in a large corporation, or a small corporation—could receive a pension in excess of $45,000 a year.

The Committee on Finance provision provides for a limit on contributions determined as 75 percent of the last highest 3 years of earnings based on a maximum base of $100,000, thus allowing a maximum pension, paid for by tax-deductible dollars, of $75,000 a year. I think that is a major loophole in the tax laws. I do not think it is defendable. It is an issue that should be debated on the floor of the Senate.

The principles raised by my amendments need to be debated. If Congress is going to allow wealthy people to retire on pensions of $75,000 a year paid for by tax deductible dollars, I think it is an unconscionable act and the entire country should know what we have done. Members of the Senate should not be voting on this unless they really understand what we have done in this bill. So my two amendments will come up tomorrow.

Mr. CURTIS. Mr. President, will the Senator yield for a parliamentary inquiry?

Mr. WILLIAMS. I yield.

The PRESIDING OFFICER. The Senator will state it.

Mr. CURTIS. My parliamentary inquiry is this. When the amendment in the nature of a substitute to be proposed by Mr. Nelson for Mr. Long, Mr. Bensen, and Mr. Bennett is offered under the unanimous-consent agreement, how much time will be allotted on this amendment?

The PRESIDING OFFICER. One hour.

Mr. Javits addressed the Chair.

Mr. CURTIS. Mr. President. I again point out that that is not a proper way to proceed. There would be no reason why the leadership would consult with the junior Senator from Nebraska about handling a bill that came from the Committee on Labor and Public Welfare.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield?

Mr. CURTIS. I was clearly under the impression that the work of the Committee on Finance would have 6 hours' general debate and that was what I agreed to when I left the floor. But the agreement was in reference to a bill coming from the Committee on Labor and Public Welfare. I do not think the Senate should tie its hands to a debate for 1 hour on an amendment of 227 pages.

Mr. JAVITS. Mr. President, will the Senator yield?

Mr. WILLIAMS. I yield.

Mr. JAVITS. Mr. President, a parliamentary inquiry?

The PRESIDING OFFICER. The Senator will state it.

Mr. JAVITS. Mr. President, if a unanimous consent is made when the substitute is submitted that the substitute be considered as original text, and that unanimous consent is agreed to, what will then be the time situation?

The PRESIDING OFFICER. Any substitute to the bill will be considered as original text without any unanimous-consent agreement. Under the

unanimous-consent agreement which we entered into an original amendment would be limited to 1 hour of debate.

Mr. Javits. Mr. President, if the substitute, once submitted, is accompanied by a unanimous-consent request that the substitute shall be considered as if it were original text of the bill, will that change the situation? It seems to this Senator it certainly would. Incidentally, it is our intention that the unanimous-consent request shall apply—6 hours, 1 hour, 2 hours, et cetera—to the original text of the bill as incorporated in the substitute. That is why we intend to ask unanimous consent—at least, I am sure the Senators Nelson, Bentsen, and Long would agree; we have all agreed—that the substitute should be submitted as original text, and therefore the unanimous-consent agreement would apply.

The Senator from Nebraska (Mr. Curtis) is entirely right. We had no intention or desire that there was to be 1 hour's debate on the compromise. We would have to make a new unanimous-consent agreement which would be in effect. We will submit the substitute with the unanimous-consent request that it stands as the original text of the bill.

Mr. Robert C. Byrd. Mr. President, will the Senator yield?

Mr. Williams. I yield.

Mr. Robert C. Byrd. What the Senator is suggesting—and I am not at present raising any objection—is that we enter into a new unanimous-consent request with regard to time on the substitute. As I understand the rules, any substitute for the bill, such as the Senator contemplates, is automatically considered as original text without unanimous consent, and open to amendments in the first and second degrees.

If the Senator wishes to ask unanimous consent that at such time as the substitute is offered there be a certain amount of time on that, that is all right, but I do not think we ought to get into the situation of asking unanimous consent that the substitute be considered as original text merely for the purpose of getting additional time. If that is what the Senator desires to accomplish, I think we should go right ahead and ask for additional time on the substitute, because it would, in any event, be considered as original text.

Mr. Griffin. Mr. President, if the Senator will yield, I wanted to say that any portion of the 6 hours provided for in the unanimous-consent agreement that had not been consumed at that point could be used in the discussion of the substitute.

Mr. Robert C. Byrd. Yes. The Senator is correct.

Mr. Griffin. In addition to that, 1 hour is provided for.

Mr. Robert C. Byrd. Yes.

Mr. Griffin. Would it not also be true, I should like to ask the Chair, if an amendment to the substitute is offered, it would have to be in the first degree, and would there not be an additional hour on any amendment to the substitute?

The Presiding Officer. The Senator from Michigan is correct.

Mr. Griffin. So I can see that there is plenty of time available.

Mr. Bentsen. Mr. President, let me discuss the practicalities of this——

The Presiding Officer. The Senator from New Jersey has the floor.

Mr. Williams. I yield to the Senator from Texas.

Mr. BENTSEN. Mr. President, we have had a remarkable degree of cooperation between the two committees; namely, the Senate Labor and Public Welfare Committee and the Finance Committee. In the spirit of that type of cooperation, it seems to me that we ought to have an equal allocation of time on the bill between the Finance Committee and the Labor and Public Welfare Committee. We have some 6 hours on the bill. It seems to me there have been almost equal contributions by those committees. Could not the allocation of those 6 hours be divided between the contributions of the Finance Committee and those of the Labor and Public Welfare Committee?

Mr. JAVITS. Mr. President, will the Senator yield to me?

Mr. WILLIAMS. I yield.

Mr. JAVITS. Mr. President, we have arrived at this point: 6 hours on the bill extends to the substitute. There is 1 hour on the substitute itself. Any amendment to the substitute has 1 hour of its own. That is exactly where we are on the bill, with one exception: 2 hours for the Senator from South Carolina (Mr. Thurmond).

Therefore, as I understand it, we can let the matter stand exactly as it is, with the understanding that any amendment the Senator from Nebraska (Mr. Curtis) has—indeed, I think any amendment to the self-employed part of the bill—should be acted on tomorrow. I understand that is the main focus of the interest of the Senators who have spoken. So that would be done tomorrow rather than today, and on getting the unanimous consent, when the substitute is offered, the Senator from South Carolina (Mr. Thurmond) may have 2 hours on his amendment to the substitute. Then we will be exactly where we are today on the unanimous consent agreement to the bill, and no one will be prejudiced or discriminated against.

With the division of time as to the Finance Committee, both the Senator from New Jersey (Mr. Williams) and I, and the Senator from Michigan (Mr. Griffin), representing the minority leadership, have 3 hours. I think we are in complete agreement that half of all the time we have should go to the Finance Committee. So there is no problem, provided we get—and I hope Senators will be accommodating—2 hours on the amendment the Senator from South Carolina (Mr. Thurmond) had contemplated offering to the original bill. Would that not settle it?

Mr. BENTSEN. Mr. President, I suggest the absence of a quorum——

Mr. ROBERT C. BYRD. Mr. President, will the Senator withhold that request?

Mr. BENTSEN. Yes, I withhold it.

The PRESIDING OFFICER. Does the Senator from New Jersey yield?

Mr. WILLIAMS. I yield.

Mr. ROBERT C. BYRD. Mr. President, I suggest that we proceed. I do not think this will be a difficult problem. To say at this point that there will be an equal amount of time given to the committee substitute is something we ought not to get into at this point. For example, I do not know how much time will be used on the committee bill before we get to the substitute. We may spend only 5 minutes on the bill. Or, we may spend 5 hours.

Does not the Senator agree that we ought not to get into that problem until it arises?

Mr. Javits. With one other understanding: No matter what we do, the Senator from South Carolina (Mr. Thurmond) retains, as a sort of gentlemen's understanding here, his basic 2 hours on his amendment as it goes to the substitute. Other than that, I think we are exactly where we were. As far as I am concerned, I think we have done exactly what we intended to do.

Mr. Robert C. Byrd. I assume the Senator from South Carolina intends to offer his amendment to the substitute.

Mr. Thurmond. That is correct, Mr. President. I understood the substitute probably would be offered and probably would be adopted, and that I would offer my amendment to the substitute.

Mr. Robert C. Byrd. Mr. President, I ask unanimous consent that on the amendment by the Senator from South Carolina—which will be offered to the substitute—there be an allocation of 2 hours, as it was previously agreed to when it was anticipated that he would offer his amendment to the bill.

The Presiding Officer. Without objection, it is so ordered.

Mr. Griffin. Mr. President, may it be understood that none of the time up until now has been charged against the 6 hours allocated to the bill?

The Presiding Officer. Without objection, it is so ordered.

Mr. Griffin. Mr. President, on behalf of the minority leader, I should like to indicate that half of the time on this side will be allocated to the distinguished ranking member of the Labor and Public Welfare Committee and half to the ranking member of the Finance Committee or his designee.

Mr. Javits. I think that is very fair.

Mr. Williams. Mr. President, today the Senate takes up the consideration of S. 4, the Retirement Income Security for Employees Act.

Mr. Robert C. Byrd. Mr. President, will the Senator yield?

Mr. Williams. Mr. President, I am happy to yield.

Mr. Robert C. Byrd. Mr. President, the time on passage of the bill is under the control of the distinguished majority leader and the distinguished minority leader. Acting on behalf of the majority leader, may I ask the Senator from New Jersey and the Senator from Wisconsin how they would like to have the time allocated. How would the Senators like the 3 hours to be allocated?

Mr. Curtis. Mr. President, may we be informed what arrangement is being made?

Mr. Robert C. Byrd. I had hoped that the Senator heard what I said.

Mr. Curtis. No; I did not hear it.

Mr. Robert C. Byrd. Mr. President, under the agreement, the time on this side for debate on the passage of the bill was to be under the control of the distinguished majority leader. I am asking the distinguished Senator from New Jersey and the distinguished Senator from Wisconsin how they would like to have those 3 hours allocated between them.

Mr. Williams. Mr. President, I would hope that the Senator from Wisconsin and I could jointly manage the time as the proponents of the bill. Then there will be a substitute offered. I wondered if we could jointly manage the allocation of the time.

Mr. Robert C. Byrd. Mr. President, on behalf of the majority leader, I yield half the time on the bill to the Senator from Wisconsin and half to the Senator from New Jersey.

Mr. Nelson. Mr. President, may I inquire whether it has been agreed that the two major amendments will be offered as original text?

Mr. Robert C. Byrd. If they are in the form of a substitute for the bill, they would be considered thusly.

Mr. Nelson. The first one we will offer as original text, and the second as an amendment.

Mr. Robert C. Byrd. Mr. President, is the first one to be considered as a complete substitute?

Mr. Nelson. The Senator is correct.

Mr. Robert C. Byrd. Mr. President, then that would automatically qualify as original text.

Mr. Nelson. Mr. President, I will offer the second one as an amendment and ask unanimous consent that it be treated as original text.

Mr. Robert C. Byrd. Then that would be a matter for the Senate to decide, as to whether or not it wished to object. Does the Senator wish to make that request at this time or later?

Mr. Nelson. Mr. President, I ask unanimous consent that amendment No. 497, which would be the amendments from the Finance Committee, be treated as original text at the time I offer it.

The Presiding Officer. Is there objection to the request of the Senator from Wisconsin?

Mr. Curtis. Mr. President, reserving the right to object, what does that amendment contain?

Mr. Nelson. It contains all of the provisions that the Finance Committee put into the legislation which are not related to subjects in S. 4.

Mr. Curtis. Are not those provisions in the amendment that I hold in my hand?

Mr. Nelson. No; the provisions in the Labor Committee bill and in the Finance Committee bill which were dealt with by both committees—vesting, funding, fiduciary responsibility, and so forth—have been worked out and are in the amendment that the Senator from Nebraska is holding in his hand.

The other amendment would contain all the provisions that the Finance Committee dealt with and that the Labor Committee did not deal with at all.

Mr. Curtis. Mr. President, why are they not in this amendment in the nature of a substitute?

Mr. Nelson. The amendment before you is the material agreed to with members of the Labor Committee. The next amendment is exactly as agreed to by the Finance Committee and relates only to tax matters.

On page 3 of the amendment the Senator has in his hand, if the Senator looks at title VII, he will see the provisions included in the second amendment are all from the Finance Committee. None of those provisions was dealt with in the Labor Committee bill.

Mr. Thurmond. And they are not incorporated in this document which I have this morning?

Mr. Nelson. The Senator is correct. They are not. The first amendment which will be offered contains only the items that were dealt with by both the Finance Committee and the Labor Committee as far as vesting and so forth are concerned.

The second amendment contains only the tax provisions that the Finance Committee dealt with alone.

Mr. CURTIS. Those are some of the more important parts of this legislation.

It includes the amendments to the Keogh bill, H.R. 10, which involves the question of limitations that the distinguished Senator from South Carolina wished to discuss.

It will also include a new provision giving to individuals not covered by any plan an opportunity to provide for retirement and tax benefits.

Mr. NELSON. The Senator is correct.

Mr. CURTIS. It also provides for lump sum distributions.

Mr. NELSON. The Senator is correct.

Mr. CURTIS. Now, if that is offered as another bill, I expect that those three things would be subject to an hour's limitation.

Mr. NELSON. The proposal is that half of the time be managed by the Senator from New Jersey, and that time, if it is all used, will be used on Amendment No. 496. The other half of the 6 hours will be used on the second amendment which involved the issues the Senator discussed. And that will have 3 hours.

Mr. CURTIS. Then, does the Senator mean that the minority members of the Committee on Finance will have 45 minutes in which to discuss this matter?

Mr. NELSON. I do not understand. There will be 3 hours.

Mr. CURTIS. That is an hour and a half to the side.

Mr. NELSON. Then there is 1 hour on any amendment that any Senator wishes to offer. As far as to the Finance Committee amendments, I am perfectly willing to give any Senator on the minority side that wants half of it, 1½ hours of the 3 hours. It is perfectly satisfactory.

No one is limited, because all that any Senator has to do is to offer an amendment and have ½ hour on his side of the amendment in any event.

The PRESIDING OFFICER. Is there objection?

Mr. THURMOND. Mr. President, will the Senator yield?

The PRESIDING OFFICER. Is the Senator reserving the right to object.

Mr. THURMOND. Mr. President, reserving the right to object, will the Senator yield?

Mr. WILLIAMS. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. WILLIAMS. Mr. President, is there a unanimous-consent request pending before the Chair?

The PRESIDING OFFICER. There is a unanimous-consent request by the Senator from Wisconsin that amendment No. 497 be considered as original text when offered. And the Senator from South Carolina, as I understand it, has reserved the right to object.

Mr. NELSON. Mr. President, I asked unanimous consent that amendment No. 497 when offered be considered as original text.

The PRESIDING OFFICER. The Senator is correct.

Mr. THURMOND. Mr. President, as I understood it, the plan was for the Finance Committee amendment, which is S. 1179, which was a compromise amendment, so I was informed, be offered as a substitute for the bill. I understood that everyone had agreed on that more or less. Is that the case or not?

Mr. WILLIAMS. Mr. President, that is close, but not quite correct. The essence of S. 1179, as I understand it, is the bill introduced by the Senator from Texas. That was the bill considered in the Finance Committee.

The substitute is designated as a substitute for S. 4, and that carries the number 496. That is the compromise position that was worked out between and by members of the two committees involved here.

Mr. THURMOND. That is what I understood. In effect, then, S. 1179 would become the basic bill if that amendment is accepted?

Mr. WILLIAMS. The original S. 4 and the original S. 1179 were put together after long, long discussions, and the resulting compromise is an amendment that now bears the number 496. It will be offered as a substitute to S. 4.

Mr. THURMOND. Mr. President, Amendment No. 496 will be a compromise bill. It represents the work of the Finance Committee and the Labor Committee. That would be adopted as the basic bill. Is that correct?

Mr. WILLIAMS. Precisely.

Mr. THURMOND. Mr. President, I withdraw my amendment No. 496, with respect to page references and so forth.

Mr. NELSON. Mr. President, the next amendment will be amendment No. 497. The Senator's amendment would be applicable to that one, and the staff will assist in showing the correct line and page numbers.

Mr. THURMOND. Is Amendment No. 497 the result of the Finance Committee bill and the Labor Committee bill? Is that the compromise? I have drawn my amendment to that compromise.

Mr. WILLIAMS. Amendment No. 497 is a Finance Committee product purely. The Labor Committee certainly has no jurisdiction. It has interest, but has no jurisdiction. This is purely the tax aspects as the Senator from Wisconsin described earlier.

Mr. NELSON. Mr. President, that amendment is not here yet. So, if the Senator's staff would check with the Joint Taxation Committee staff, they will see to it that the Senator's amendment will fit in the correct place in that amendment. However, I asked unanimous consent that the amendment that contains the provisions from the Finance Committee bill be offered to this substitute, and when offered, it will be treated as a simple amendment and be treated as original text. If that unanimous-consent agreement is agreed to, the Senator from South Carolina will be offering his amendment to that amendment.

Mr. THURMOND. In other words, as I understand it, the amendment that I intend to offer would be offered to the compromise of the Finance Committee and of the Labor Committee?

Mr. NELSON. Designated amendment No. 497, not 496.

Several Senators addressed the Chair.

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RETIREMENT INCOME SECURITY FOR EMPLOYEES ACT

The Senate continued with the consideration of the bill (S. 4) to strengthen and improve the protections and interests of participants and beneficiaries of employee pension and welfare benefit plans.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request of the Senator from Wisconsin?

Mr. THURMOND. Mr. President, reserving the right to object, we are conferring now.

Mr. ROBERT C. BYRD. Mr. President, may I reserve the right to object also, while Senators are discussing the matter?

Mr. CURTIS. Mr. President, may I be recognized? I have a suggestion that I think will help solve the problem.

The PRESIDING OFFICER. Does the Senator from New Jersey yield to the Senator from Nebraska for that purpose?

Mr. WILLIAMS. I yield to the Senator from Nebraska.

Mr. CURTIS. Again, while there is no neglect on anyone's part, we find ourselves in quite a tangle over this limitation of debate. We could end up with some very important matters here with just a few minutes of debate, and the time on the bill all exhausted.

This matter has taken a decided turn since the unanimous-consent request on time limitation was agreed to. As I stated earlier, when I agreed to the unanimous-consent request. I thought I was talking about legislation coming from the Committee on which I served, the Finance Committee.

Mr. ROBERT C. BYRD. Mr. President, may we have order in the Senate while the Senator is talking?

The PRESIDING OFFICER. The Senator from Nebraska will suspend. The Senate will be in order.

Mr. CURTIS. Now we find a further turn. I thought that the entire work of the Senate Finance Committee would be offered as a substitute, including the compromise language, but that is not going to be true.

I not only did not see this language, I did not know there was a compromise underway. I am the ranking minority member on the Subcommittee on Private Pensions, and I knew of no compromise underway. Now, it is true that those subcommittees held the hearings and the full committee wrote the legislation for the Finance Committee, but at the same time I had no knowledge of it.

I think we will actually save time if the distinguished acting majority leader would ask unanimous consent that the limitation on time previously agreed to be set aside.

Mr. ROBERT C. BYRD. Mr. President, I could not agree to that request. I feel that as we proceed things will work out, as they always do. The Senator has been here longer than I have, and he knows very well that we oftentimes run into these problems that are seemingly impossible of resolution, but they work themselves out. I do not think we will have an insurmountable problem in this instance. We have 6 hours on the bill, 1 hour on any amendment, 2 hours on the amendment by Mr. Thurmond, and one-half hour on any amendment to an amendment. I think if we just get started, it will work out all right. I am confident that it will. I understand the bill's complexity, and I am not on either of the committees which have jurisdiction, but I would hope that the Senator would simply let us proceed. I would want to debunk any suggestion, at the moment, that the unanimous-consent agreement should be vitiated. As we reach the problems, we will find the answers to them, procedurally, may I say.

Mr. CURTIS. I think that we would save time and have a much more orderly procedure if we abandoned the unanimous-consent agreement made under entirely different circumstances.

The PRESIDING OFFICER (Mr. Hathaway). Is there objection to the request of the Senator from Wisconsin?

Mr. HARTKE. Mr. President, I ask unanimous consent that a member of my staff, Craig Hudson, may have the privilege of the floor during the considerations of this bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HARTKE. Mr. President, reserving the right to object, the Senator from Nebraska (Mr. Curtis) has put his finger on the problem. I raised this point at the Democratic caucus, that they would not be prepared to proceed on this bill at this time. The bill was not available last night. There is no report of it on the floor, although there were reports on two separate bills, one by the Committee on Labor and Public Welfare, and one by the Finance Committee. We have a summary here on the agreements worked out by the two committees.

The Senator from Nebraska (Mr. Curtis) has correctly stated the situation, that while this was done last Friday, there is no way for Members of the Senate to understand what is in this very complicated piece of legislation, which I think is as complicated a bill ever to come to this floor in a very long time. It gives promise of performance without much reality. It freezes in the status quo.

I would want to raise this question with the Chair: If there is an amendment presented, is it subject to a point of order immediately before failure to comply with the bill which no one at this moment has even seen?

Mr. ROBERT C. BYRD. Mr. President, may I say in response, while the Parliamentarian is discussing other matters, that any Senator may require that an amendment be in writing——

Mr. HARTKE. I understand that. I have some amendments in writing to the bill to be reported to the floor of the Senate. That bill will now be replaced by one which no one has yet seen. No Member of the Senate has had the opportunity to read it except a few choice people selected without any statements to the committee.

The Senator from Nebraska (Mr. Curtis) would agree with that. What was worked out by one part of the committee, and I got this from the press release—this is probably, in my opinion, the sloppiest piece of legislation ever presented to the floor of the Senate. It is a bad way to do business. We are dealing with the futures of 30 million Americans here. I say to you, Mr. President, that to do this in this fashion without having a chance to understand what is in the bill—the original legislation was bad enough—I do not know what this does—I tried until 6 o'clock last night to get a copy of the bill. It was not drafted. There is no report. There is nothing on which we can proceed now. What is being attempted by the Senator from Wisconsin is to substitute one bill for two other bills. In other words, what is being attempted at the present time is to legislate on a piece of legislation, and what they are trying to do is to divide the authority of the committee. There is no one piece of legislation which is being presented to the floor of the Senate. I seriously doubt whether this conforms to any Senate rules, unless we want to do it by unanimous consent. So, to me, to all intents and purposes, we have abrogated the committee system.

Mr. ROBERT C. BYRD. Will the Senator from Indiana yield?

Mr. HARTKE. I am glad to yield.

Mr. Robert C. Byrd. May I say that I see nothing untoward, procedurally, in the situation here. We are often confronted with complex measures on the floor of the Senate, to which any Senator may offer a substitute. This does not rule out of order any amendments to the substitute, really, on that basis alone.

Mr. Hartke. I quite understand what the Senator is saying. We can do anything by unanimous consent, except abolish the Senate on the floor of the Senate, possibly. But this has absolutely eroded the committee structure system. There has not been an effort made here to deal with this legislation in terms of the committee system of the Senate. The Senator from West Virginia (Mr. Robert C. Byrd) is correct, we can substitute a whole new bill in writing on the floor of the Senate. That is not what is being attempted to be done here. A small group of people have gotten together and presented, on the day of debate, a compromise measure, agreed to by a few of them. That is what it is. That is perfectly legitimate. It is perfectly legal. There is no question about it. But, it is not good legislative practice. That is how we get bad bills.

Mr. Robert C. Byrd. I would agree with the Senator from Indiana, to that extent, it is often done—often done——

Mr. Hartke. It is not done in this fashion. What we have here are two bills from the two committees which have been reported and we take them in tandem and put one on top of it to handle—well, what we have are three bills. The Senator from New Jersey will agree with that, that we are trying to divide the time up in accordance with three bills, one from the Committee on Labor and Public Welfare, one from the Finance Committee, and one from the Senator from Wisconsin (Mr. Nelson). Is that not true?

Mr. Williams. Yes. And we all know that for a long time we have had joint jurisdiction of the broad subject matter of pension legislation. The Committee on Labor and Public Welfare has been working on this pension legislation for 3 years, very intensely. The Finance Committee historically has had, of course, a tax interest in pension legislation. When the Labor and Public Welfare Committee reported the bill, and it came to the calendar, it was held for a while—so that the Finance Committee—could consider pension legislation as it had every legislative jurisdictional right to do.

It was discovered in the Finance Committee, of which the distinguished Senator from Indiana (Mr. Hartke) is a member, that there was much in the Labor and Public Welfare Committee bill that members of the Finance Committee felt had a great deal of merit in terms of substance. Then the question came on how to report the bill from the Finance Committee that incorporated the substantive ideas that both committees had agreed on, together with the weaving in of tax enforcement.

I think that we have brought forth a legislative product that is a model of adjustment of committee jurisdictions. Rather than finding it the sloppiest way to do business, in my judgment, I believe it is one of the most civilized and promising developments in the Senate where two committees do not get at loggerheads and fight each other over jurisdiction of legislation but come together on substance and agreement.

Mr. BENTSEN. Mr. President, will the Senator from New Jersey yield to me?

Mr. HARTKE. Mr. President—Mr. President—I have the floor—Mr. President, who has the floor?

The PRESIDING OFFICER (Mr. ALLEN). The Senator from New Jersey has the floor.

Mr. HARTKE. Mr. President——

Mr. WILLIAMS. Mr. President, at this point, I yield to the Senator from Texas——

Mr. HARTKE. Mr. President, the Senator from New Jersey cannot yield on my time——

The PRESIDING OFFICER. The Senator from New Jersey has control of the time and he is yielding to the Senator from Texas.

Mr. HARTKE. All right.

The PRESIDING OFFICER. The Senator from Indiana reserved the right to interpose an interjection. This unanimous-consent request is not debatable. At a very early moment, the Chair will cut off this discussion and ask if there is objection to the unanimous-consent request.

Mr. WILLIAMS. Mr. President, I yield to the Senator from Texas (Mr. Bentsen) who, I am sure, can clarify and tell the Senator from Indiana where we stand.

The PRESIDING OFFICER (Mr. ALLEN). Is there objection to the request——

Mr. HARTKE. Mr. President——

Mr. ROBERT C. BYRD. Mr. President, what request are we talking about?

The PRESIDING OFFICER. The request of the Senator from Wisconsin (Mr. Nelson) that when amendment No. 497 is offered, it will be considered original text.

Mr. ROBERT C. BYRD. Mr. President, reserving the right to object, and if the Senator from New Jersey will yield to me——

Mr. WILLIAMS. I do.

Mr. ROBERT C. BYRD. May I say that the distinguished majority leader, prior to the August recess, requested and secured unanimous consent to lay down S. 4 for consideration by the Senate as of September 11, 1973, which was last Tuesday. Various members of the Finance Committee, including the distinguished Senator from Texas (Mr. Bentsen) and members of the Committee on Labor and Public Welfare, including the distinguished chairman thereof, Mr. Williams, approached the leadership urging that there be a week's delay in consideration of the bill so as to accommodate the resolution of the various differences between the two committees, both of which have jurisdiction over this matter. The leadership, reluctantly, but I think wisely, agreed to a delay of 1 week to allow those two committees to attempt to work out the differences between them. As I understand it, a goodly number of those differences have now been resolved by virtue of that week's delay.

Mr. President, now, getting to the request of the Senator from Wisconsin, may I have a restatement of his request?

Mr. NELSON. I asked unanimous consent that at the time amendment No. 497 is offered to amendment No. 496, that amendment be treated as original text.

Mr. ROBERT C. BYRD. Mr. President, reserving the right to object, may I have an understanding of just what the request involves? As I understand the request, it would merely mean that the amendment so numbered would be open to amendment in two degrees.

The PRESIDING OFFICER. That is correct.

Mr. ROBERT C. BYRD. It would also mean that an amendment offered to the amendment would have 1 hour allotted to it, rather than 30 minutes.

The PRESIDING OFFICER. That is correct.

Mr. ROBERT C. BYRD. I have no objection.

The PRESIDING OFFICER. Is there objection?

Mr. THURMOND. Except that my amendment would have 2 hours.

Mr. ROBERT C. BYRD. The Senator has 2 hours on his amendment.

The PRESIDING OFFICER. Is there objection to the request?

Mr. HARTKE. Mr. President, reserving the right to object, I should like to ask this question: What happens to the original S. 4?

The PRESIDING OFFICER. S. 4 remains pending until some action is taken. It will be up to the Senate as to whether amendment No. 496 is adopted and whether amendment No. 497 is adopted as amendments to S. 4.

Mr. HARTKE. Reserving the right to object, does the Senator from New Jersey agree with the Chair that the amendment of the Senator from Wisconsin will then be a substitute for S. 4 and for S. 1179?

Mr. WILLIAMS. The amendment to be offered by the Senator from Wisconsin, No. 496, procedurally will be offered as a substitute. This is the compromise labor-finance amendment. It will then be original text.

Mr. HARTKE. Then, S. 4 and S. 1179 no longer will be considered on the floor. Is that correct? I am not talking about the language.

Mr. WILLIAMS. The substance of each is contained in amendment No. 496, the amendment to be offered by the Senator from Wisconsin.

Mr. HARTKE. Let me ask this of the Chair: Then, are not amendments which are drawn at the present time as amendments to S. 4 or S. 1179 subject to a point of order because they will not be addressed to the substitute amendment?

The PRESIDING OFFICER. They can be made to conform.

Mr. HARTKE. Can we have in the unanimous-consent agreement the provision that no objection will be raised on the ground of a point of order which was done on a previous measure on the floor of the Senate, when the Senator from Indiana was raising a question, for the very same reason?

Mr. ROBERT C. BYRD. I do not think the Senator has any need for concern. Any Senator is allowed, under the unanimous-consent request, to offer an amendment. The Senator can offer an amendment which does conform with the text.

The PRESIDING OFFICER. The Chair states to the Senator from Indiana that there will be no problem with respect to that. It will just be a question of changing the section.

Mr. HARTKE. I want to tie that down. In the Cambodia resolution, that is exactly what was done to the Senator from Indiana. A point of order was raised on that technicality, and the Chair sustained the objection. Once having been bitten by the cobra and saved my life, I do not want to go back into that pen again.

Mr. ROBERT C. BYRD. In that instance, there might have been some question of germaneness. As I understand the amendments which the Senator is going to offer to the substitute, there would be no question of germaneness.

Mr. HARTKE. If that is true, why can we not have a ruling from the Chair that no point of order will be raised to these amendments? The amendments I have relate to pension reform. I believe I have been involved in pension reform longer than any Member involved in the compromise. My proposal predates anything in the Committee on Labor and Public Welfare or the Committee on Finance. As the Finance Committee members know, I did participate fully in the modification of the original bill.

The PRESIDING OFFICER. The Chair states that if the amendment would be germane to S. 4, it also would be germane to amendment No. 496 or amendment No. 497.

Mr. BENTSEN. Mr. President, reserving the right to object, I suppose that if anyone has the right to object, it ought to be me because I am the original sponsor of S. 1179. If I thought for a moment that we were considering irresponsible legislation or legislation that had been hastily thought through, I would be objecting at this time. But I have seen that we have been able to profit from the work of the Labor Committee, which has had long and extensive experience in handling such legislation. In my opinion, we have benefited from the experience of the Finance Committee. The way these two committees have cooperated is something which is a highlight in the Senate.

What I am interested in seeing is an effective piece of reform legislation passed. I think that is what we are proposing to the Senate.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Wisconsin?

Mr. ROBERT C. BYRD. Mr. President, I want to make certain that I understand what the request involves. It would merely mean that the amendment by the Senator from Wisconsin (Mr. Nelson) would be open to amendment in two degrees; and that an amendment to an amendment which, under the unanimous-consent agreement, would be allowed only 30 minutes, would in this case, be allocated 1 hour.

The PRESIDING OFFICER. The Senator is correct.

Mr. ROBERT C. BYRD. Is it further understood that time on the amendment by the Senator from Wisconsin (Mr. Nelson) would be only 1 hour?

The PRESIDING OFFICER. The Senator is correct.

Mr. ROBERT C. BYRD. Perhaps we are laboring under a misunderstanding. This is something that ought to be clarified now. I thought the distinguished Senator from Wisconsin—and perhaps because of some failure on my part to speak clearly—I thought the Senator was under the impression that once his amendment was called up, there would be 6 hours on the amendment. I think the only measure on which there is 6 hours, under the agreement, is S. 4; and when the Senator from Wisconsin offers his amendment, it will come under the unanimous consent agreement allowing 1 hour on any amendment. By virtue of his request, which is pending, there will be no change in the time on his amendment. The amendment would merely be opened up in two degrees and would allow the offerer of the amendment in the first degree 1 hour.

Mr. CURTIS. The Senator's statement is incomplete.
Mr. ROBERT C. BYRD. Let me see if my understanding is correct.
The PRESIDING OFFICER. The Senator is correct.
Mr. CURTIS. Is it not true that if it is original text, it can be amended after it has been adopted?
Mr. ROBERT C. BYRD. Yes.
Mr. BENTSEN. Is it not also true that the distinguished Senator from Wisconsin would have an hour?
Mr. ROBERT C. BYRD. No; it could not be amended after it had been adopted, except by unanimous consent. Am I not correct?
The PRESIDING OFFICER. The Senator is correct.
Mr. BENTSEN. Is it not also true that the distinguished Senator from Wisconsin will also have 1 hour and a half on the bill itself?
Mr. ROBERT C. BYRD. I think that is where the confusion has arisen. The Senator from Texas is correct. A little earlier, I asked that the majority leader's time on the bill be allocated to the Senator from New Jersey (Mr. Williams) and the Senator from Wisconsin (Mr. Nelson), but that is on S. 4. The two Senators are in control of time on the bill and may yield therefrom. Mr. Nelson would control 1 hour and a half on the bill, and he would control 30 minutes of the hour allotted to his amendment.
The PRESIDING OFFICER. The Senator is correct.
Mr. ROBERT C. BYRD. We have been talking about procedure all this time. I ask unanimous consent that none of the time consumed thus far be charged to any Senator in charge of time on the bill.
The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.
Now is there objection to the request of the Senator from Wisconsin? The Chair hears none, and it is so ordered.
Mr. WILLIAMS. Mr. President, I yield myself 10 minutes.
The PRESIDING OFFICER. The Senator from New Jersey is recognized for 10 minutes.
Mr. WILLIAMS. Mr. President, today the Senate begins consideration of S. 4 the Retirement Income Security for Employees Act of 1973, a bill designed to protect the private pensions of American working men and women.
I think its position on the calendar makes it the longest standing piece of legislation on the calendar, second only to legislation from the Committee on Agriculture. It is a subject that has been before the Senate for study for a long, long time.
It is my fervent hope that such long overdue and vital legislation will be passed, and soon take its place among other historic labor protections enacted by the Congress.
If we are to insure that retirement benefits earned by and promised to our workers will really be given to them, then passage of such a measure is essential.
This legislation, cosponsored by 53 Members of the Senate is the product of the most comprehensive study of the private pension system ever undertaken by the Congress.
This 3-year study was conducted by the Subcommittee on Labor pursuant to three successive resolutions of the Senate, and was undertaken to ascertain the need for statutory protections for workers' pension programs and to formulate appropriate corrective legislation.

The provisions of S. 4 are designed to eliminate the deficiences which our study identified in the existing private pension system.

Its basic goal is to assure workers that they will receive the promised pension benefits earned for their retirement during their working lives.

This bill responds to the proven need for a comprehensive and meaningful reform of our private pension system.

It proposes fair, feasible, and effective regulatory measures which will fulfill the fundamental purpose of a pension.

For too long and for too many workers, the promise of pension benefits upon retirement has been an illusion and indeed, a hoax.

While there can be no doubt that our private pension system has well served the needs of many workers, our study found that for countless others, the expectation of retirement benefits has proven to be built on sand.

This was the experience, for example, of Stephen Duane, who worked for 32 years at an A. & P. warehouse in Jersey City.

Because his warehouse was shutdown when Mr. Duane was 4 years short of the company's minimum pension age, he received no retirement benefits whatever despite his long years of service.

A similar experience was recounted by Murray Finkelstein, a New York shoe salesman.

After 20 years in his retirement plan, he lost all his pension rights at age 60 when the Andrew Geller shoe store, at which he worked, went out of business.

The system also failed for Iris Kweck whose employment by Anaconda was terminated after 30 years of service because of a shutdown of its Detroit billing office.

At age 48, she lost all future pension rights.

These are but a few of the numerous examples brought to the attention of our committee.

They are in no sense isolated instances, but indeed are all too typical.

They reflect the fact that 23 percent of all workers covered by private pension plans receive no rights whatever until the day they are eligible to retire, and many others must work 16 years or more for the same employer before earning any vested rights.

Indeed, two-thirds of all pension plan participants at this moment have no vested right in their plan.

As a result, losses of pension expectations can befall employees in wholesale fashion.

Last year, for example, when a Raybestos Corp. plant in New Jersey closed, up to 900 employees lost not only their jobs but were foreclosed from any future pension benefits, since their plan afforded no vested rights until retirement.

Another reason why so many employees have found their pension expectations to be illusory is that the employer may shut down, and if there are insufficient funds to meet the vested claims of the participants, they have no recourse.

A classic case, of course, is the shutdown of Studebaker operations in South Bend, Ind., in 1963, with the result that 4,500 workers lost 85 percent of their vested benefits because the plan had insufficient assets to pay its liabilities.

While this was a spectacularly tragic instance, it was by no means unique. Last year, for example, P. Ballantine and Sons, a substantial contributor to a multiemployer plan, sold its operations and withdrew from the plan.

Because the plan did not have sufficient assets to cover vested liabilities, several hundred employees, with as many as 30 years service, will lose a substantial portion of their vested benefits.

These, of course, are by no means isolated cases. According to a recently-issued study by the Departments of Labor and Treasury, over 19,000 workers lost vested benefits last year because of the termination of insufficiently funded plans.

Our private pension system is a potent force intrinsically woven into our national economic and social structure.

Having existed in our society for nearly 100 years, pensions have now become a symbol of old-age security for nearly 36 million workers—and their dependent families.

The combined resources of existing pension programs are in excess of $150 billion and are increasing at a rate well over $10 billion annually.

These assets are the largest single source of virtually unregulated capital in our country.

This reservoir of such a staggering sum contains the hopes and dreams of retirement security for the participants who have worked for and are covered by such plans.

S. 4 not only recognizes this, but acknowledges the need for some regulation of these resources.

The simple fact is that at the present time, there is no law which guarantees that the pension promised in past years, for which a worker has devoted a lifetime of loyal service, will be paid.

It is true that in 1959, following congressional inquiry into mismanagement of funds, the Welfare and Pension Plans Disclosure Act was enacted.

This legislation was intended to assure the honest and reasonable administration of private employee benefits in the pension system by requiring plans to file annual reports of their administration, operations, and financial activities.

Regrettably, however, despite the filing of such reports, the legislation proved largely ineffective even in its limited objectives, because of the absence of enforcement authority.

While reporting requirements did aid the Government in assessing the scope of pension plans, they clearly did not assure workers that their benefits would be protected and provided.

Subsequent amendments to the act, in 1962, which provided penalties for crimes such as embezzlement and bribery involving pension funds, also fell far short of protecting workers in their pension expectations.

S. 4 embodies solutions to the problems documented by the Senate Labor Subcommittee during its study.

The methods utilized by the subcommittee in its study and findings are all matters of public record.

They have been published in reports and disclosed in public hearings conducted here in Washington, and in a number of cities across the country.

The PRESIDING OFFICER. The Senator's 10 minutes have expired.

Mr. WILLIAMS. I yield myself 10 additional minutes.

Mr. President, the documented evidence produced by the subcommittee served to highlight the inequities and deficiencies existing in the system which individually or collectively contribute to the denial of workers' pensions.

Our bill was structured to deal with those deficiencies and to safeguard and guarantee the fulfillment of pension promises.

This comprehensive legislation achieves an appropriate balance between two competing schools of thought which emerged during our study.

One advocated stringent Government controls which would substantially divest the private sector of discretion in design and development of pension programs.

The other strongly resisted legislative attempts to impose even minimum measures, claiming these would destroy flexibility and initiative in the formulation of pension plans and deter their development.

This bill secures a promise of retirement security, and yet creates no impediments to the continued growth and expansion of private pensions.

Its objectives and minimum standards are all compatible with flexibility in development.

Its provisions are only minimum standards, and no employer is impeded from building upon or improving these minimum requirements.

Improvement upon the design, coverage, and benefits is a matter of free choice by employers.

During its study, the Senate Labor Subcommittee identified specific areas of private pensions which warrant legislative attention.

These relate to the issues of vesting, funding, portability, insurance, fiduciary standards, reporting, and disclosure—issues which cover the entire spectrum of the pension system.

Strengthened by an abundance of evidence and documentation, the Senate study established that essential pension reform can be achieved by:

First. A Federal law establishing minimum standards of vesting to assure that workers receive guaranteed vested benefits after a specified period of work.

Second. A Federal law establishing funding requirements, accompanied by a program of plan termination insurance, to assure that funds are available to pay the vested benefits earned and due to workers.

Third. A program to develop a system of portability and reciprocity among private pension plans permitting the transfer of earned credits from one plan to another.

Fourth. Improved requirements for disclosure of data reflecting administrating and operation of pension funds, and comprehensible communication of plan provisions, rights, and obligations to participants.

Fifth. Uniform Federal standards of fiduciary responsibility, providing a more stringent code of conduct for trustees and administrators.

Sixth. Appropriate Federal administrative and enforcement authority to assure implementation and observance of the protective requirements.

The first area I cited is that of vesting of benefits. The need for remedial legislation in this area can no longer be a matter of dispute.

Vesting is the right of a plan participant to receive benefits which have been earned by and have accrued to him, even though his employment is terminated before he is eligible to retire.

These vested benefit credits will usually accrue to an employee after he has reached a stipulated age or completed a period of service or a combination of both.

When a worker has vested benefits, even if employment terminates before he is eligible for retirement, the employee will still be entitled to receive those earned benefits upon reaching the normal retirement age.

Without vested rights, should employment terminate prior to the time when he is eligible for retirement, a worker would be entitled to no benefits whatsoever despite many long and loyal years of service.

Notwithstanding claims by opponents that the current trend in pension plans indicate improved and increased vesting provisions, plans with inadequate or nonexistent vesting provisions are not uncommon.

In one phase of the Senate Labor Subcommittee study, examination of 1,493 pension plans demonstrated that approximately 23 percent failed to contain any vesting provisions and, as I have previously pointed out, two-thirds of all plan participants now have no vested benefits.

When faced with these findings, I believe that even the most ardent opponents to pension reform must concede that mandatory vesting in pension plans is essential. The files of the Senate Subcommittee on Labor overflow with examples of men and women who, after devoting a lifetime of work in anticipation of a pension, learned only too late that they would receive nothing because they lacked vested rights to any benefits.

S. 4 provides that pension plans must contain a deferred graded vesting schedule for minimum benefits.

It would require that after 8 years of service a worker will be entitled to vested rights equal to 30 percent of accrued pension benefits, and thereafter an additional 10 percent annually, so that after 15 years of service, a worker would have a vested right to 100 percent of his accrued benefits.

Most significantly, such vesting requirements would be retrospective in application.

The additional cost from this retrospective vesting is greatly outweighed and minimal when one considers the invaluable assurances which it will provide to our older generation of workers.

While minimum vesting standards represent a promise to pay earned benefits, such promises, of course, are meaningless and empty unless the pension plan has sufficient assets necessary to pay the committed benefits.

Accordingly, our bill would establish a general requirement that all unfunded pension liabilities will be completed over a period of 30 years.

However, the Secretary of Labor is authorized to permit variances from the statutory funding schedule when it can be satisfactorily established that such is necessary to prevent substantial economic injury to the employer.

A necessary adjunct to funding requirements is a program of insurance.

Until a plan has become fully funded, the danger is ever present that should the plan terminate, plan assets may not be sufficient to meet the benefits owed to the workers.

S. 4, therefore, provides for a mandatory Federal insurance program.

Insurance premiums would be paid by the employer according to the amount of unfunded, vested liabilities.

And the fund formed by these premiums would protect workers against termination of a plan with insufficient assets.

Mr. President, the concept of this type of insurance is not new.

It has long been established and proved effective by such programs as Federal Deposit Insurance Corporation, which protects bank savings.

And just a few years ago, Congress enacted the Security Investor Protection Corporation, which is a Government-chartered entity to guarantee investors in the stock market against losses experienced by brokerage houses.

These Government insurance programs have been successful and, contrary to predictions by their opponents, have stimulated and contributed to the growth of the institutions they protect.

I might add that at the present time, no private insurance company offers protection against the risk of pension plan termination, and our bill, therefore, provides for a governmental insurance program.

However, it is entirely possible that at some future time, a role could be found for private insurance in this area.

Another aspect of the Senate study demonstrated that when workers transferred from one job to another, in most instances, the earned pension credits are not transferred from one employment to another.

Outside of multiemployer plans, there is no mechanism today for transferring earned vested pension credits from one job to the next.

A centralized control or clearinghouse system which can provide for transfer of these credits would clearly serve a most desirable function.

S. 4 provides for the establishment of such a program by the Secretary of Labor.

It would be a voluntary system, with administrative advantages which should appeal to employees and employers alike and offer sufficient inducement to encourage participation by both.

New reporting and disclosures of pertinent data of the administration and operations of pension plans are also provided by S. 4.

Even more important are provisions prescribing the degree of conduct and responsibility which should be required of a fiduciary who exercises a measure of control over plan assets.

These new requirements are accomplished by amendment to the Welfare and Pension Plans Disclosure Act.

The Senate study concluded there is a need for more detailed knowledge of the sizes of plans, their assets, and transactions and their internal administration and operations.

Increased regulatory control over plans to ascertain such data is certain to serve the best interests of the parties affected.

Financial reports of plans are to include opinions by independent accountants of the plans' financial condition which must be based upon annual audit.

Plans must include in their reports detailed financial information, relating to business transactions and the funding and financial standing of the plan.

Administrators are required to furnish to employees or make available to them reports of the plans' details in a manner calculated to be easily understood.

Employers would also be required to inform workers of their rights and obligations under the pension plan which covers them.

As to fiduciaries, the degree of accountability will be increased to that required of a prudent man acting in like circumstances and fiduciaries are specifically prohibited from engaging in various types of transactions which present conflict of interest situations.

One of the first situations we saw in our studies was the United Mine Workers pension plan. The funds were deposited in the union-owned bank and gathered no interest at all. This was the first grievous abuse that the committee discovered.

As a deterrent to mismanagement or irresponsible acts or judgments affecting pension assets, a fiduciary breaching such trust would become personally liable for losses sustained.

S. 4 would empower the Secretary of Labor to seek redress in the Federal courts to compel compliance with the provisions of the act.

For the first time, plan participants would also be given the right to seek appropriate relief in both Federal and State courts against fiduciaries for violations committeed by them with respect to a pension plan.

Opponents to pension reform have argued and will continue to argue that enactment of such legislation will permit excessive governmental interference with the private pension system.

This is just plain not so.

Upon close analysis, as shown in detail by the Senate study, many plans have already extended their benefits and provisions beyond those prescribed by S. 4.

The provisions I have described would achieve an equitable balance between the interest of employers and the need to protect employees covered by pension plans.

Before closing, I should point out that, as is quite well known, there has been a substantial controversy over the most appropriate approach to the administration of pension reform legislation and, consequently, over which committees of Congress should have jurisdiction respecting the formulation of such legislation.

Many of us have believed that since the whole point of this legislation is to protect the deferred compensation rights earned by workers, the program should be administered by the Department of Labor and that the Labor committees of Congress should have jurisdiction over the legislation.

Others have felt since what little law presently exists concerning vesting and funding is found in the Internal Revenue Code, the tax

writing committees should have jurisdiction over further legislation, and that the Internal Revenue Service would be the appropriate administering agency.

It is clear that opponents of reform legislation have hoped, and its supporters have feared, that this jurisdictional controversy would result in an impasse which would prevent any legislation from being passed.

I am happy to report that this has not happened.

Shortly after S. 4 was reported to the Senate, the Finance Committee undertook to fashion reform legislation of its own, and its measure, S. 1179, was reported to the Senate last month.

The bill reported by the Finance Committee, which reflects all of the basic principles embodied in S. 4, is a most worthy measure and contains some features which I am pleased to recognize as improvements over our own.

This deliberative time certainly gave us an opportunity to see improvements in the bill as originally reported.

I believe the fullest recognition for this excellent effort should be given to Senator Long, the chairman of the committee, and Senator Bennett, its ranking minority member, as well as Senator Nelson, the chairman of the subcommittee, which conducted the Finance Committee's hearings on this subject, and Senator Bentsen, who introduced and helped shape the bill the Finance Committee has reported.

Since S. 1179 was reported, our two committees have made extensive efforts to resolve and accommodate those differences of concern and approach which are reflected in the two bills.

This undertaking has been successful, and in the process I believe we have managed to build upon the strengths of each bill and incorporate the best of both.

The resulting product will be offered as a substitute amendment to S. 4, and I shall join in urging its adoption by the Senate.

In closing, I would stress that pensions are not gratuities, like a gold watch bestowed as a gift by the employer on retirement.

They represent savings which the worker has earned in the form of deferred payment for his labors.

Passage of this legislation will demonstrate that Congress is determined to protect these earnings, and restore credibility to the private pension system.

The pension hopes of over 35 million of our workers depend upon this legislation; they are looking to us to restore their faith, trust, and belief in their pension system.

They are entitled to help from Congress, and we can no longer deny, doubt, or delay the need for this reform.

Our studies have brought to light a sorrowful segment of our working population whose expectations of pension benefits have been proven illusory.

The span of a working life does not provide them with a second time around; nor should we in Congress condemn others to a similar fate by failure to act favorably on this legislation its first time around.

Mr. President, the distinguished Senator from New York (Mr. Javits), the ranking minority member of the Labor and Public Welfare Committee, and I have been concerned about this matter and have

been working at it over the last several years. Our studies have brought out some of the gaps in the present pension plans.

The bill is a product of an effort that I think most workers of this country will consider to be historic.

Certainly, my colleague, the Senator from New York, has been a tower of strength and his understanding of the problems of working people and their pension plans has been very significant in the development of this legislation.

Mr. President, I am happy to yield the floor or yield to the Senator from New York as much time as he requires within the time available.

Mr. Javits. Mr. President, having been granted time by the minority side, I yield myself 15 minutes.

Mr. Curtis. Mr. President, a parliamentary inquiry.

The Presiding Officer. The Senator will state it.

Mr. Curtis. Who is in charge of the time on the bill on the minority side?

The Presiding Officer. The Senator from Nebraska and the Senator from New York jointly.

Mr. Javits. Mr. President, the minority whip (Mr. Griffin), as I understood, yielded an hour and a half to me and an hour and a half to the Senator from Nebraska.

The Presiding Officer. That is correct.

Mr. Javits. Mr. President, this is a most auspicious day for the working people of our country. At a minimum, there are some 30 million workers affected by private pension plans, and in my judgment that number will be expanded by the provisions of this bill to at least 10 to 20 million more, which would represent a very large majority of the work force of the United States.

It has taken many years to bring this bill to fruition, but it was worth waiting for, for it will, as its title says, at long last give assurance of retirement income security for the workers of America.

Also, Mr. President, like my colleague from New Jersey, I wish to signal the fact that this bill is of critical importance to employers and to the health of our country in dealing with a problem which has been so basic to America: the erosion of morale in the American worker, because we think he has not felt an adequate interest in a system which symbolizes the well-being that typifies our country as far as workers are concerned.

This bill will go far. We do not claim for a minute that it does everything, but it will go far toward rectifying serious deficiencies in terms of the retirement income which we have made available to our workers.

That said, Mr. President, I join the Senator from New Jersey in a tribute to the Finance Committee, its chairman (Mr. Long), its ranking Republican member (Mr. Bennett), the chairman of the subcommittee who held the hearings (Mr. Nelson), and the author of the Senate Finance Committee bill, the Senator from Texas (Mr. Bentsen). I have never seen in all my time here—almost 18 years—a more effective effort to coordinate probably as complex a piece of legislation as we have had to consider in years.

Mr. Robert C. Byrd. Mr. President, may we have order in the Senate?

The Presiding Officer. The Senate will be in order.

Mr. Javits. A singular dedication to the public welfare was manifested, of a most extraordinary kind. As everyone knows, we do not do these things ourselves; it is our staffs who are the heroes in this case. I wish to pay especial tribute to Mike Gordon, who is sitting beside me and is the minority counsel of the Committee on Labor and Public Welfare in respect to pension and welfare matters; to Larry Woodworth, from the Joint Committee on Taxation, as well as the staff of that committee and the Finance Committee; and to Mario Noto, special counsel to the Labor Committee, who for a very long time, until his health prevented him from active participation, was most active. His replacement, Bob Nagle, general counsel to the Labor Committee has provided great service as well. These, I think, were the major hands who did the job and put this together, and I think the American workers will be eternally grateful to them for such selfless and self-effacing work.

As to the collaboration of Senator Williams and myself, it goes beyond just being colleagues. It represented a deep commitment of friendship and understanding of the sort which makes being here and working so hard one of the most exciting experiences in my life, and I believe in the life of every Senator.

In addition, I would like to express my appreciation to each and every member of the Committee on Labor and Public Welfare. They all have participated constructively and vigorously in the bipartisan formulation of a comprehensive legislative approach to the deficiencies in private welfare and pension plans. The American people owe these Senators a great debt of national gratitude for their contributions in bringing this historic bill to the floor. I would like to take this opportunity to identify the members of the Committee on Labor and Public Welfare—all of whom have assisted in this pension reform effort. The other members of the Committee on Labor and Public Welfare are: Jennings Randolph of West Virginia, Claiborne Pell of Rhode Island, Edward M. Kennedy of Massachusetts, Gaylord Nelson of Wisconsin, Walter F. Mondale of Minnesota, Thomas F. Eagleton of Missouri, Alan Cranston of California, Harold E. Hughes of Iowa, William D. Hathaway of Maine, Peter Dominick of Colorado, Richard S. Schweiker of Pennsylvania, Robert Taft, Jr. of Ohio, J. Glenn Beall, Jr. of Maryland, and Robert T. Stafford of Vermont.

So, Mr. President, this bill, whatever may be its state in the amendment stage or passage stage, is really a triumph of the legislative art, to say nothing of its being a measure of epochal significance to the American working people and I think to the American system.

Also, Mr. President, let me say that we are dealing here with the beginning, I think, of a true understanding of what is meant by the people's capitalism. The fact is that all of us—worker, employer, investor, and citizen—participate in this economy in such a way as to give us the deepest possible investment in a system which makes all this possible and we make it possible with "freedom," using that word with full understanding of all the problems which we have, and yet with pride that this is by all odds still, to this moment, the greatest nation of full individual rights and opportunity mankind has ever seen on Earth in all of its history.

One last word about the Finance Committee's role as it broadened this bill: Perhaps I should not say that, for fear of incurring many more amendments, but it is true that it has broadened this bill in a way in which we on the Labor Committee could not—because it has broadened the opportunities for workers who are not under pension plans to establish their own plans, and it has also broadened the opportunity of the self-employed and those who are high up in the corporate hierarchy to improve their condition. And, though it is very well known that I have strong views, generally described as liberal, respecting the rights of workers and their recompense, I will yield to no one with respect to my understanding of the problems of management, Mr. President, and the necessity of getting top-flight corporate managers.

Their benefits and perquisites are greater than that of the rank and file, and if I know the people of my country, they want it that way. They want to reward skill, intelligence, and ability, and do not begrudge it at all. That may not be true everywhere in the world, but it is certainly true in the United States of America.

So when we come to those parts of the Finance Committee bill, we will also have to exercise statesmanship and not discriminate against people of skill and talent, who are also entitled to retirement security on the standard of living which they are entitled to, because of their merit, hard work, and ability—all to the benefit of our country.

Mr. President, in "the end is my beginning," 6 years ago—when I introduced the original bill (S. 1103, 90th Congress) on this subject—I stated that:

> . . . all of these problems are so interrelated that they cannot be solved without a comprehensive legislative program dealing not only with malfeasance of administrators, and not only with the consequences of plant shutdowns and plan terminations, but also with the broad spectrum of questions such as adequacy of funding, reasonable minimum standards of vesting, transferability of credits under some circumstances, and, in short, the establishment of certain general minimum standards to which all private pension plans must conform.

That was 6 years ago. I still believe it to be true and I believe the Members of this body believe it to be true. And now we have the opportunity to act on that belief and American working people have the opportunity to witness that action.

I would like Senators to recall, Mr. President, that I am by no means to be considered the originator or the inventor of this idea. The Senator from Indiana (Mr. Hartke), who is in the Chamber, some years ago and I remember it very distinctly, sought to extend the principle of termination insurance to pension plans. I took a hand in saying it was premature because we did not know what we were insuring. He was sympathetic although he felt deeply about what he was doing. I am gratified that now he, too, is like the rest of us, and he should take great pride and credit from this joint product of our two committees.

The dreams that he had in mind, and his very well-intentioned desire to give minimum protection to workers in a very bad situation were instrumental in bringing us today to our appointment with pension reform legislation.

So, Mr. President, I emphasize that, because many people have worked very hard to try to bring us to the happy circumstances we face today—where the fundamental premises of this measure—vesting,

funding, insurance, portability, fiduciary and disclosure standards, and adequate remedies, are no longer challenged. We may differ on details but we differ no more on the approach to solving these problems.

Mr. President, I close as follows:

The fact of the matter is that the private pension plan is a means for transferring earnings during the working years into income for a decent living in the older years. The worker "works" for that pension the same way he "works" for his wages or salary and when he does not get it or some reasonable portion of it, he is angry, frustrated, and ultimately convinced that he has been robbed of a material recognition that was due him.

For over the last half-century, public policy has been concerned with relieving oppressive work conditions and enhancing work opportunities. It is but a natural extension of that policy to obtain protection for workers against deprivations of their private pensions. Moreover, the connection between erosion of the work ethic and inequity in private pension plans is quite real and is shown by the overwhelming weight of the testimony to be direct and material. As long as workers remain convinced that the private pension promise is too often unreliable, and that the plans themselves are often arbitrary in their design, they will suspect the employer's sincerity as to their recompense or welfare, and this not only undermines the employer's purpose for maintaining a pension program based on duration of employment but also affects the worker's attitude toward his job.

Private pension and welfare reform legislation is not a panacea for dealing with the more subtle undercurrents of worker unrest; but the enactment of such legislation—if sufficiently broad to encompass the problems which have resulted in undue private pension losses—will clearly establish a more positive climate of respect for, and affirmation of, the worker's contribution to our economic progress.

The establishment of this kind of climate is essential if we are going to go forward to solve the tremendous problems we have had and maintain during the remainder of the 20th century, our economic growth and build basic confidence in our Nation's ability to compete successfully in the area of international economic rivalry which looms ahead.

Mr. President, it has been a long and difficult struggle, but at hand is the opportunity to humanize the private pension welfare system and to expand its scope. With the attainment of that objective, everything we have done will be worthwhile.

I hope that every Member of the Senate when, tomorrow night, we come to vote on what I hope will be essentially this bill, will feel great gratification that by this legislation we will have accomplished a tremendous step forward, a tremendous benefit for millions and millions of hard-working Americans, and for their generations to come.

Mr. President, I yield back the remainder of my time.

Mr. Williams. Mr. President, I ask unanimous consent that the distinguished Senator from Alabama (Mr. Allen) may be included as a cosponsor of S. 4.

The Presiding Officer. Without objection, it is so ordered.

Mr. Ribicoff. Mr. President, the time for meaningful pension reform is long overdue. The bill now before the Senate is a critical first

step toward assuring millions of Americans of adequate retirement security.

The private pension industry is one of the fastest growing enterprises in America. It has grown from assets of $2.4 billion and coverage of 4 million employees to assets of over $130 billion and coverage of 40 million workers in 1970. Today there are some 34,000 private pension plans in existence.

What, then, is the problem if the pension industry is growing in assets and more people are covered every year?

The problem is that in too many cases for too many people the promise of an adequate retirement pension is illusory.

A 3-year study of the functioning of private pension plans conducted by the Senate Subcommittee on Labor disclosed these shortcomings:

Too many workers with substantial service with their employers are well along in years have failed, through lack of reasonable vesting to acquire nonforfeitable benefit rights prior to termination from their jobs.

In too many plans—even if a minority—funding practices in relation to benefit liabilities have been inadequate.

In too many plans—even if a still smaller minority—trust funds, supposedly consecrated to the securing of worker benefits, have been manipulated for alien purposes.

In too many instances the abrupt termination of a going plan, even if well designed and administered, leaves in its wake a trail of bruised or broken pension promises.

The UAW also made a study of plans terminating in the period of 1958–69. That study's basic conclusions were:

Significant numbers of private pension plans terminate and can be expected to continue to do so.

No matter how carefully plans may be negotiated, no matter how soundly conceived and financed, large numbers of persons covered will not receive all—in some instances, any—of their expected benefits.

Frequently, workers with long service who have not reached retirement age will receive less than the full amount of their accrued benefits.

It is nonsense to argue, as some critics do, that plan termination insurance is unnecessary because relatively few plans terminate. It is equally true that relatively few airliners are hijacked and relatively few banks fail.

As recently as this week I have received letters from constitutents telling their stories of how they lost their pensions when their company went out of business. A major transportation company, C.R. & L. Bus Lines recently went out of business in Connecticut. As a result the employees, many of whom had worked a lifetime for the company, found themselves without a pension. It is clearly unfair to deprive these employees of a pension.

These then are the problems. What can be done about them?

The bill we have before us successfully faces these problems in large measure.

In essence the bill would establish minimum vesting standards to assure that an employee's rights to his pension were fully established after 15 years of service.

The legislation sets up a plan of termination insurance to assure an employee of his pension if the company goes out of business.

It establishes a mechanism so that an employee can carry his accrued pension rights with him from job to job rather than losing all rights when he switches employment as is the case today.

And it sets up standards of funding and fiduciary responsibility to assure that there are adequate moneys in the pension fund and that they are invested and administered wisely.

These basic elements of pension reform will help to assure millions of workers of their rights to pension security. At the same time the legislation will do nothing to discourage the development of a healthy pension industry.

I hope my colleagues will approve this legislation without delay.

Because of the complex nature of the legislation I would like to explain the basic provisions at some length.

ELIGIBILITY AND MINIMUM VESTING STANDARDS

The bill we approved stated that no qualified pension plan would be permitted to require, as a condition of eligibility to participate in the plan, a period of employment longer than 1 year, or attainment of an age greater than 30, whichever occurs later.

The committee approved a minimum vesting standard, establishing the minimum period of employment within which a pension plan must grant a participant in the plan a specific vested right to pension benefits—a vested right to a pension benefit here refers to an employee's right to draw a specified pension benefit beginning at the normal retirement age, which right may not be taken from the employee for any reason other than the employee's failure to live to such retirement age. Under the committee-approved minimum vesting standard, the plan must provide a plan participant who has been employed for 5 years with a vested right to 25 percent of the pension benefits that he has accumulated. For this purpose, employment both before and after the employee became a plan participant is counted in determining the time at which the employee has met the 5-year requirement and become entitled to 25 percent vesting. The required vesting level of 25 percent is increased by 5 percent for each additional year of plan participation until the employee becomes entitled to 50 percent vesting, for example, after 10 years of employment and 5 years of plan participation. The required vesting level of 50 percent is then increased 10 percent a year for each additional year of plan participation, so that 100 percent vesting is required after 15 years of employment and 10 years of plan participation.

For example, an employee who begins work for an employer at the age of 24 must, when he attains the age of 30, become eligible for participation in such employer's pension plan, and be given a 25 percent vested right in any pension benefits he earns during his first year of participation. Assuming the employee continues in employment until shortly after his 35th birthday and terminates his employment at that time, the plan must provide such employee with a vested right to 50 percent of the pension benefits he has earned while a participant from his 30th birthday until after his 35th birthday.

The general effective date of the minimum vesting standard is January 1, 1976, and the minimum standard is to apply to employment service prior to the effective date as well as to future service. In the case of plans adopted after enactment, the effective date is 1 year after date of enactment. In cases where existing pension plans were the subject of collective bargaining, the new rule would not become applicable until the present collective bargaining agreement terminates—provided such agreement is due to terminate within 5 years after date of enactment. Plans which provide for full 100-percent vesting at the end of 10 years of coverage will be exempted from compliance with the new standard for a period of 5 years.

The committee reviewed the present law eligibility and vesting rules applicable to employees covered by the H.R. 10 type plans—that is the requirement of eligibility after 3 years of service with immediate 100-percent vesting—and determined the present rules more adequate.

The committee also agreed to an amendment which would permit, under certain circumstances, the disregard of employees covered under a collective bargaining agreement in determining whether a proposed pension plan covers the necessary percentage of employees. The circumstance permitting such disregard is that there is some specific evidence that the union representatives rejected pension benefits in the course of collective bargaining.

MINIMUM FUNDING STANDARDS

The committee agreed to a minimum funding standard which requires the payment of current or normal pension costs and the level payment, or amortization, over a 30-year period of unfunded accrued liabilities, without regard to whether such past service liabilities are vested or unvested. A plan amendment resulting in a 5-percent increase in unfunded past service cost existing at the time of the amendment is to be regarded as a "substantial" increase in unfunded past service costs which may be treated as a new plan and funded over 30 years.

The committee agreed that an "experience deficiency," which is a loss due to actual experience under a pension plan that varies from the actuarial assumptions entering into the determination of the plan cost, must be funded, or made up, over a period of 15 years or the average remaining working life of the covered employees, whichever is the shorter period. Experience or actuarial gains, attributable to a favorable variation in actual experience compared to the actuarial assumptions entering into determination of plan costs, are to be taken into account over the same period, that is the shorter of 15 years or average remaining working life of the employee group. In this connection, the committee agreed that assets of pension funds should be valued on the basis of a 5-year moving average.

The committee agreed to grant the Secretary of the Treasury authority to establish qualifying standards for actuaries and to certify actuaries for practice before the Internal Revenue Service. It further provided for the creation of an Advisory Board of Actuaries to assist the Secretary in evaluating actuarial problems. Certification of pension plans by actuaries every 3 years, or more frequently if the Secretary deems it desirable, and notification of change of actuaries by plans

and reasons therefor, are additional provisions to which the committee agreed.

In the case of multi-employer plans, the committee agreed that where the new minimum standards result in an increase in annual costs of 10 percent or more, the Secretary could allow past service costs existing on the effective date to be funded over a specified longer period.

The committee agreed to continue present law funding requirements—that is, contribution of normal costs plus interest on past service costs—in the case of Federal, State, and local government pension plans. However, the committee directed the Treasury to make a study of the funding of Government pension plans.

The committee agreed that plans funded exclusively by the purchase of level annual premium insurance contracts would be deemed to comply with funding requirements if the insurance company is licensed to do business in the State where the employer is located.

The committee agreed that the Secretary should be permitted to waive the minimum funding requirement in cases involving financial hardship to the employer, with a proviso that the waived contribution must be made up in level payments over the next 10 years. However, not more than five such waivers may be made in a 10-year period. And, upon termination of a plan due to circumstances such as inability of employer to make contributions, the plan would continue to be treated as tax-exempt.

If the employer fails to meet the funding requirements, and does not obtain a hardship waiver, the committee agreed to impose an excise tax of 5 percent of the amount by which the employer failed to meet the minimum funding contribution. An additional excise tax of 100 percent is imposed to the extent the employer fails to make the required contribution within 1 year of the due date. A similar excise tax is imposed where an employer fails to make the contribution required by the formula to a profit-sharing or money-purchase plan.

The effective date of the minimum funding provision is January 1, 1976.

PORTABILITY

The committee agreed to provide a mechanism for a voluntary portability program for vested pensions. Under this program, a central portability fund would be established to receive deposits of moneys representing an employee's vested rights when he is separated from an employer prior to reaching retirement age. The employee's interest in the portability fund could then be transferred to his next employer's pension fund. In each case the transfers are dependent upon the voluntary agreement of the first employer, the employee, and the subsequent employer to participate in the portability provisions. The committee agreed that the central portability fund should be a private corporation under the trusteeship of the Secretaries of Labor, Commerce and Treasury, with the Secretary of Treasury being the managing trustee.

The committee also agreed to require employers to notify the Social Security Administration upon termination of employment by an employee with a vested pension right, so the Social Security Administration can maintain a lifetime record of an employee's vested pension

rights and the current address of the pension fund liable to pay such pension.

PLAN TERMINATION INSURANCE

The committee agreed to a program of plan termination insurance. The program would be administered in the same fashion as the central portability fund described above. It was agreed that the pension benefit insured would be the vested benefit provided for under the plan, up to 50 percent of the average monthly wage in the last 5 years, but not more than $750 a month. The $750 figure would be adjusted in accordance with changes in wages taxable under social security.

The premium would be 50 cents per pension plan participant, payable by the employer. This premium would apply for a 3-year period. and at the end of this period the manager of the fund could change the premium based upon experience.

The insurance protection would not apply until a plan had been in operation for 3 years and would not apply to increases in benefits under amendments which had not been in effect for years prior to termination. The insurance would apply, however, to vested benefits earned prior to, as well as subsequent to, the effective date of the act.

Under the proposed insurance plan, the employer would generally be liable for 10 percent of the losses due to inadequate funding upon termination of his plan, with a limitation that such liability could not exceed 50 percent of the net worth of the employer at such time. Such liability would be subordinated to other creditors. The employer would be given the option of avoiding any personal liability by agreeing to pay a higher premium, the amount being 20 cents more per plan participant—making 70 cents per plan participant in total rather than 50 cents. In this case, the insurance would apply only after the plan had been in effect 5 years and, in case of any plan amendment liberalizing benefits, only after 5 years. The managing trustees are given the authority to make a separate charge for and keep a separate account for multi-employer plans, if deemed desirable.

To avoid abuse, pension plans are required to first repay employee contributions, and then to pay out insured benefits. The insurance fund would be liable only if the pension funds were inadequate to meet such obligations. Other technical amendments are provided.

The effective date of this provision is to be January 1, 1975, as to the organization of the program and payment of premiums. Losses due to terminations occurring 3 years after registration of a plan in the insurance program are insured.

FIDUCIARY STANDARDS

The committee agreed to the establishment of fiduciary standards which are essentially the same as the definitions of "prohibited transactions" set forth in S. 4 and S. 1557. "Prohibited transactions" refers generally to transactions which fiduciaries should not engage in. However, the committee believed that enforcement of compliance with these standards could better be achieved by the imposition of excise taxes in cases where there is a violation of the rules prohibiting such transactions. The excise tax is 5 percent initially and upon failure of the party

involved to make corrections within a stated period, the tax may go as high as 100 percent. Essentially, the sanctions imposed upon "fiduciaries" and "parties in interest" in relation to pension funds are similar to the sanctions imposed by the Tax Reform Act of 1969 upon foundation managers and disqualified persons in the case of transactions involving private foundations.

The committee agreed to prohibit the investment of pension funds in employer securities, but provided that this rule would not apply to present holdings of employer securities by pension funds. The committee also agreed to limit investment in employer securities by profit-sharing trusts to 10 percent of trust assets in those cases where the employer securities are not readily tradable on an established securities market, but provided this rule would not apply to present holdings of employer securities. For this purpose, employer securities sold in an over-the-counter market are regarded as readily tradable on an established securities market. The committee agreed it was inappropriate to place any limitation on investment in employer securities in the case of stock bonus plans.

ENFORCEMENT PROCEDURES

The committee agreed to provide for the establishment with the Internal Revenue Service of a separate office, headed by an Assistant Commissioner of Internal Revenue, to deal primarily with organizations that are or claim to be exempt from income tax under section 501 (a) of the Internal Revenue Code—including pension and other trusts; religious, charitable, educational, et cetera, organizations; and others described in section 501(c) of the Code. The committee agreed to impose on employers an excise tax, essentially an audit tax, equal to the number of his employees covered by qualified plans times $1. The revenue raised by this tax and one-half of the revenue raised by the 4-percent excise tax on private foundations should reimburse the Government for the cost of regulating these organizations.

Since under present law the employer can appeal an adverse pension plan determination by the Internal Revenue Service to the Tax Court only after a plan contribution has been made and the contribution deduction disallowed, the committee agreed to provide a procedure for obtaining declaratory judgments. Under this procedure both the employer and the employees may appeal to the Tax Court for a review of an Internal Revenue Service determination letter and request a declaratory judgment as to the status of the plan or amendment. In addition, provision is made for appeals to the Tax Court and other Federal courts in the case of proposed excise taxes based on alleged violations of the fiduciary standards, and on other questions involving plan qualification.

The committee agreed to provide for the availability of arbitration services by the National Mediation Service in cases involving class actions affecting the qualification, administration or operation of qualified pension plans. The committee further agreed that Commissioners of the Tax Court of the United States should provide low-cost arbitration services in the case of disputes involving claims of individual participants in pension plans.

INDIVIDUAL RETIREMENT PLANS

The committee approved a new deduction for contributions to individual retirement plans to be available only to those persons not covered by qualified pension plans established by corporations, self-employed persons, or Federal, State, and local govermental units. The deduction would be limited to $1,000 a year and, while there is no percentage-of-earned-income limitation on the deduction, the taxpayer must have earned income. The individual retirement plan would be similar in many respects to a self-employed plan where there are no employees. However, it is contemplated that the Federal Government will offer retirement savings bonds designed to meet the needs of persons saving for retirement under these plans.

SELF-EMPLOYED (H.R. 10) PLANS—LIMITS ON CONTRIBUTIONS

The committee agreed to raise the limit on contributions to self-employed (H.R. 10) pension plans, while at the same time making such increased limitations applicable to corporate pension plans in which the owner-managers have a significant interest.

LIMITATION ON CONTRIBUTIONS FOR OWNER-MANAGERS

S. 1179 provides that retirement plan contributions on behalf of such owner-managers, referred to in the bill as proprietary employees, are to be subject to the same limitations as apply to the self-employed plans. Under S. 1179, deductible contributions to a self-employed plan are permitted equal to 15 percent of earned income up to $100,000, but not in excess of $7,500. The committee agreed to an amendment which would delete the contribution limitations on proprietary employees in S. 1179 and substitute therefor a rule expressed as a limitation on the stated pension benefit which may be provided a proprietary employee. The limitation is that the pension of a proprietary employee under a plan shall not exceed 75 percent of the average of the employee's highest 3 years of compensation, with a limitation that average compensation in excess of $100,000 will be disregarded.

Hence, the maximum pension benefit permitted a proprietary employee is $75,000. This maximum benefit is to be funded over the remaining working life of the employee, but may not be funded over a period of less than 10 years. In the case of a profit-sharing or money-purchase plan, the amount contributed on behalf of a proprietary employee would be subject to limitations corresponding in substance to the limitations on contributions on behalf of proprietary employees under a stated benefit plan.

JOINT AND SURVIVOR OPTION

The committee agreed that a qualified pension plan must include a provision allowing an employee-participant a choice between having his pension benefit paid out as a single life annuity over his lifetime or having a reduced annuity for his lifetime with a survivor's annuity being provided his spouse, if she should survive him.

MONEY PURCHASE PLAN LIMITATION

The committee agreed that contributions to a money purchase pension plan on behalf of an employee should be included in such employee's gross income to the extent that such contribution is in excess of 20 percent of the employee's compensation.

LUMP-SUM DISTRIBUTIONS

The committee agreed to a new tax treatment of lump-sum distributions received by an employee from a qualified retirement plan on termination of employment. Under the new provision that portion of the distribution representing pre-1974 value would receive capital gain treatment. The balance of the distribution, in excess of basis, would be subject to tax as though it were equal to the taxable income of a separate taxpayer, but with 15-year averaging; that is, compute tax on one-fifteenth of the balance of the distribution as if the taxpayer had no other income and no deductions, multiply the result by 15, and add this to the employee's tax liability computed without taking into account such portion of the distribution. A special lower income allowance adjustment is provided to insure that the tax of lower income taxpayers on their lump-sum distributions will generally not be more than it would be under present law. The lower income allowance for this purpose will be about $10,000 and will phase out gradually in the case of lump-sum distributions in excess of $100,000.

Mr. Moss. Mr. President, one of the most significant developments in the recent postwar era in the United States has been the tremendous growth of the private pension plan system. There are now 34 million Americans participating in such plans—which is seven times the number enrolled in 1940.

The concentration of wealth represented by these plans has grown even more rapidly—from $12 billion in assets in 1940 to more than $150 billion today.

The private pension plan system has become an essential feature of our social and economic order. In fact, when you consider that social security has always been intended to provide only supplemental retirement income, it is clear that private pensions remain the primary means by which our society provides economic security in old age.

Given the immense importance of the private pension program, I believe it is also apparent that up until now we have not provided sufficient regulation to make certain that the program does, in fact, provide the security that it promises. Senator Javits, who has performed a great service on the Labor and Public Welfare Committee in the area of pension reform, has stated that private pension funds represent "the largest concentration of wealth with the least regulation in the country."

The lack of regulation for the current system has led to one glaring abuse: many people who pay money into pension funds, on the expectation of retirement income, end up receiving no benefits whatsoever.

There are a number of reasons for this inequitable—and often tragic—situation. In our highly mobile society, many people change jobs before accruing the time required to be eligible for retirement

benefits. Others become disabled before they reach the necessary age. Others are laid off, and still others lose out when their employers go out of business. In addition, there are many instances where pension funds have been mismanaged, resulting in an insufficient amount of funds to cover all the claims.

Quite simply, those Americans covered by private pension plans do not have the assurance that they will, in fact, receive a pension when they retire.

I believe that the legislation we are considering here today will go a long way toward providing that assurance. In fact, I believe that it will be considered landmark legislation. The members of the Finance Committee and the Labor and Public Welfare Committee who have worked long and hard on the bill are certainly to be commended.

I know that several provisions in the bill have stirred considerable controversy—particularly the one concerning the limitation on the deductible contribution for owner-managers. Some limitation is obviously necessary—for otherwise we would permit an enormous tax loophole. But I hope we can agree on a limitation that is fair and equitable—one that would permit owner-managers to set aside adequate pension contributions in their high income years.

The bill also sets forth a minimum vesting standard for pension funds, and I believe the arguments for these particular provisions are overwhelming. This portion of the bill gets to the heart of the problem with the current system. Under the proposed minimum vesting a person who has 5 years of employment will be entitled to at least 25 percent of his benefits upon retirement, and the amount of vesting will increase with every subsequent year. It no longer will be possible for a person to pay into a plan for many years and then receive no retirement benefits because he must leave his job before he has reached the required age or before he has accumulated the required years of service.

I also believe there are compelling arguments for the minimum funding standards and enforceable fiduciary standards found in the bill. In the past, pension funds often have come up short because they have not been established according to reasonable actuarial standards. The funding provisions in this bill will make it far more certain that pension funds will have enough money to pay off, over a period of time, all claims earned under the plan. The fiduciary standards set out in the bill are equally important as a guard against mismanagement. Pension managers have not been above investing funds in their trust for their own gain rather than the gain of the beneficiaries.

In addition, the bill provides for a new deduction for persons who are not covered by qualified pension plans. This provision, together with the raising of the limitation on the contribution to self-employed plans, will create welcome new incentives. These provisions almost certainly will have the result of extending pension coverage to those who previously have not been covered.

Mr. President, let me state my strong support for this bill to reform the Nation's private pension plan system. In the course of our discussion we undoubtedly will want to make some amendments, but I believe that, in sum, this is a very good piece of legislation.

It should be emphasized that the bill does not represent a case of Congress meddling in the private sector, or thrusting the Federal Government into a new area of economic activity. For despite the lack of adequate regulation, the Federal Government is already heavily involved in the private pension system. The tremendous growth of the private programs has been possible only through the use of Federal tax incentives. Private pension plans are subsidized through tax deductions to the tune of some $3 billion annually. In reality, the private pension system represents a joint effort by employers, employees, and the Federal Government to provide retirement security for a large number of Americans.

The true cost of this legislation is minimal. In fact, it will result in a great savings for the Federal Government. If the private pension system can be made responsive to the needs of its beneficiaries, and if its coverage can be extended, there will be far less pressure on social security and the various types of public welfare. In recent years, many retirees have come to depend almost entirely on social security, even though the program was originally intended to provide only supplementary retirement income. This dependence on social security has been due in large part to the failure of the private means of providing retirement security.

Mr. President, there is no question as to whether this Nation is able to afford this legislation. In my view, we can ill afford not to pass it.

Mr. BEALL. Mr. President, as a cosponsor of S. 4, the Retirement Income Security for Employees Act of 1973, I rise in support of pension reform legislation. For the working men and women of this country, this may be the most important measure in the Congress. This measure may determine whether individuals who have labored a lifetime will realize a retirement with independence, dignity and reasonable comfort, which they have earned.

We as a nation can and should be proud of the remarkable growth in the private pension system. Today over 30 million workers participate in private pension programs. A little over 30 years ago, over 4 million employees were covered. This number more than doubled to 9.8 million by 1950 and increased to 21 million in 1960. However, while the total number has increased rather rapidly, the total, as a percentage of the country's industrial labor force, has increased only modestly since 1960, from 42.4 percent to 48.3 percent. This contrasts with the percentage growth during the 1950's, which saw the percentage increase from 22.5 percent to 42.4 percent.

It is estimated that this growth will continue and that by 1980, 42.3 million employees will be covered. Total assets of the pension plans which have grown from $2.4 billion in 1940 to $150 billion today, are expected to exceed $250 billion by 1980.

While this progress has been impressive, there remain serious problems. This legislation seeks to remedy some of these deficiencies. In order to do this, the bill establishes reasonable rules and standards. I am convinced that this legislation is in the best interest of American industry, labor, and most importantly, in the interest of our people.

The legislation would attempt to correct present abuses as follows:

First, the bill provides reasonable rules for vesting. Vesting refers to a nonforfeitable right which an employee acquires in a pension fund.

This means that an employee will have the right to receive benefits, after a reasonable number of years, if he leaves or loses his job, before retirement. This provision, in addition to protecting employees, provides employees with greater freedom to move from employer to employer to improve his status, without fearing loss of retirement benefits.

Equally important, reasonable vesting rules will give employees the needed mobility for the effective operations of our labor market. It is estimated that 13 percent of private pension plans do not contain provisions requiring vesting of benefits to employees prior to retirement.

Second, the legislation would require adequate funding of pension plans. When we speak of funding, we mean the accumulation of assets to pay benefits in the future to covered employees. Standards for adequate funding will help to assure that funds will be available to pay employees the funds owed to him. Without adequate funding, a vested pension may prove to be "illusory and empty."

Third, the bill would provide for a reinsurance program to take care of those cases whereby a plan is terminated as a result of a business going bankrupt, moving, or for other reasons. The Studebaker case in 1964 was the most dramatic evidence of a deficiency in this regard.

Fourth, the measure would encourage portability. While this feature would be purely voluntary, it would, if utilized, enable employees to transfer earned vested pension rights from job to job and perhaps at the close of his career, to convert all such credits into one retirement check.

Fifth, the legislation elevates fiduciary standards and improves disclosure. There have been some cases of extreme misuse of pension funds. In addition to establishing higher standards for the administering and for those who administer pension funds, the measure would improve the watchdog role of the Federal Government and strengthen its enforcement powers to prevent and correct abuses.

Sixth, the pension legislation would also encourage, through our tax laws, individuals who are not covered by private pension plans to set aside a portion of their income for their retirement years and also increase incentives for the self-employed. I believe these provisions are of utmost importance.

Mr. President, during my work on this legislation, I became acquainted with the unique pension problems of certain highly mobile individuals. This would include engineers, scientists, and other technical personnel, architects, and teachers. They are often victims of a very high pension forfeiture rate.

I had the pleasure of participating during the last Congress, in a mass rally held by the area engineers at the Goddard Space Center at nearby Greenbelt, Md. Both S. 4 and S. 1179 contain creative provisions in response to the unique problems of these highly trained and highly mobile men and women. Specifically, they provide for a technical amendment permitting tax qualification of a multi-employer pension plan with immediate vesting. This provision is patterned after the highly successful TIAA/CREF plan that has afforded full pension portability to college professors for over 70 years. An amendment requiring a change in Federal procurement regulations to protect pension forfeitures when Government procurement objectives change. An amendment requiring the Labor Department to undertake a study to

see what additional protection might be needed for highly mobile employees.

I strongly support these provisions and hope that they will be included in the final bill enacted by Congress.

Mr. President, I am impressed that private industry, labor unions, and other parties involved in the private pension system have for the most part recognized the need for and equity of this legislation. They recognized this notwithstanding the fact that additional costs will be involved. However, the costs to American workers, when earned pensions are denied, are unbearable.

This legislation is important for another reason. There is considerable concern in the country with respect to the rising social security taxes. Social security was designed to be a floor for retirement. Yet, when individuals have inadequate retirement, as many in our country do today, there is considerable pressure, and understandably so, for increasing social security benefits. The bill today will be to make the private pension system work and to make certain that the social security system will continue to supplement and not supplant the private pension system. I personally believe in the long run that this is both good for the country and for our citizens.

Mr. President, I would not want to see this bill pass without calling to the Senate's attention the most serious problem facing pensions in this country, both public and private.

I am speaking of inflation. If we do not make progress in our battle against inflation, our efforts today in improving our private pension system will be undermined. Until we bring inflation under control, today's and tomorrow's retired citizens will continue to be threatened and suffer difficulties. This point also serves to stress the need for congressional action on budgetary reform. This also, in my judgment, is a must measure.

I urge the Senate to approve this measure overwhelmingly and hope that early agreement will be reached with the House.

AMENDMENT NO. 496

Mr. Nelson. Mr. President, on behalf of myself and Senators Long, Bentsen, and Bennett, I offer amendment No. 496 and ask unanimous consent that the amendment be agreed to at this point, and, as agreed to, be considered original text for the purpose of amendment; and that the 1 hour for debate on the amendment remain available; and that the text of the amendment be printed in the Record.

The Presiding Officer (Mr. Chiles). Is there objection to the unanimous-consent request of the Senator from Wisconsin? The Chair hears none, and it is so ordered.

(The text of amendment No. 496 in the nature of a substitute, as agreed to, appears on pp. 1271–1497.)

Mr. Nelson. Mr. President, the need for private pension legislation has been driven home for many of us by specific cases we know about where clearly what was right did not prevail. One example of this type which has been called to my attention is that of a Mr. Robert Pratt of Hudson, N.Y., who in 1971 was laid off by his employer, the Gifford-Wood Co. Mr. Pratt had worked 47 years for this company and was to retire within 1 year at the age of 65.

In June 1972, Gifford-Wood was sold to another firm, and its pension plan was terminated—3 months before Mr. Pratt's 65th birthday. When he applied for retirement benefits, it is my understanding that Mr. Pratt was told he would receive nothing although he had 47 years of service.

Perhaps the most famous failure of all in the private pension system occurred in 1964, when Studebaker closed its plant in South Bend, Ind. In this case, 4,500 employees lost 85 percent of their earned pension benefits. This was an economic catastrophe to the individuals involved and to the entire community of South Bend.

Each of us has specific cases in mind where some aspect of the private pension system has not worked the way it should. Despite this, we all know that the private pension system has done a world of good for hundreds of thousands of retired employees. Our job, therefore, is not to castigate the private pension system but to provide legislation improving it.

That is our purpose here today. In this case, we have two committees who have worked long and diligently in providing badly needed reforms for the private pension system. I am referring to the Labor and Public Welfare Committee and to the Finance Committee. The Labor and Public Welfare Committee has worked in this area for a considerably longer period of time than has the Finance Committee and has clearly done the pioneering in this regard. Chairman Williams and ranking minority member Javits, especially deserve praise for their diligent work in this regard. Nevertheless, the Senate Finance Committee also has worked intensively in this area, particularly in the legislation it has reported this year.

The Finance Committee bill, which from the standpoint of our committee was developed first by the junior Senator from Texas (Mr. Bentsen), took full advantage of the intensive study and research carried on by the Senate Labor and Public Welfare Committee. In fact, in many cases, our legislation is built on and in many respects is similar to the bill, S. 4, reported by the other committee.

We believe, however, that in a number of respects there are certain advantages in the Finance Committee bill. I say this because we were able to take advantage of tax provisions in providing for the administration of the pension standards.

There already are a substantial number of professional persons in the Internal Revenue Service who devote virtually full time to the administration of existing law relating to pensions—this is a group of over 400 experts. Present law already requires the Internal Revenue Service to administer antidiscrimination rules with respect to pensions and also funding requirements—although they are much too limited. In addition, it is necessary in some cases to enforce vesting rules in order to give assurances that the plans are not discriminatory in favor of highly compensated employees. Limited rules relating to fiduciary responsibility, although of too restricted application, are also enforced through the Internal Revenue laws.

Because we believe that the administration of many of these provisions—although as I will point out in a moment not necessarily all—can best be handled by the Internal Revenue Service, we have developed a bill, S. 1179, as amended by the committee, which takes a quite

different approach from S. 4 insofar as the administration of the pension provisions are concerned.

Despite the difference in the administrative procedures followed by the two bills, the basic minimum requirements which the two bills provide for private pension plans are very similar. In some cases they are the same. On occasion, the Finance Committee bill provides a higher level of requirements than S. 4 and sometimes S. 4 provides the higher level.

Many of us on both committees felt that it would be a shame when we have two such good bills, for the possible competition of one with the other to result in the killing of pension legislation this year when it is so badly needed.

Mr. President, because of this, Chairman Long, Senator Bennett, Senator Bentsen, and myself have met with the Chairman of the Labor and Public Welfare Committee, Senator Williams, and the ranking minority member, Senator Javits, to see whether it would be possible to work out the differences in the two bills.

I am glad to say that this has been a successful effort. The staffs of the two committees, working under our direction, have developed a compromise position which I shall offer as an amendment to S. 4 as reported by the Senate Labor and Public Welfare Committee.

This amendment deals with all of the subject matter presently in S. 4 except that it makes no changes in the S. 4 provisions relating to reporting and disclosure. In addition, the Finance Committee bill, S. 1179, contains a series of tax provisions relating to self-employed individuals, proprietary employees, the tax treatment of lump-sum distributions, and provision for a $1,000 set-aside for those not covered by any present retirement plans. These provisions relate to matters which are not in S. 4 and will not be presented in the amendment I plan to offer. A version of these provisions will, however, be offered subsequently. I might say, however, that what the Finance Committee considers to be the controversial aspect of these tax provisions was removed by the Finance Committee when it reconsidered these provisions this last Friday. But, in any event, these tax provisions are not in the amendment which I am offering at this time.

I shall ask that the amendments I am offering, because they are extensive in nature, be considered as original text so the Members will have full opportunity to offer amendments to them. It is my understanding that the debate on the bill will not be finished today so that there will be an opportunity for the Members to consider possible modifications in these provisions tomorrow if they would like to do so.

In very broad terms, the amendment that I shall offer in the areas of enforcement, vesting, funding, and portability follow the general format of the Senate Finance Committee bill, S. 1179 as amended. However, in a number of respects, these provisions have been modified to take into account specific problems dealt with in S. 4. In any event, these provisions although technically using the language of S. 1179 do not differ greatly—outside of the difference in the enforcement provisions—from the provisions of S. 4.

Let me turn first to certain overall administrative aspects with respect to pension systems provided in the amendment which I am offering at this time. One of the problems with the present administration

of the pension provisions, it has been suggested, is the fact that the work tends to be spread throughout the entire Internal Revenue Service in the different branches without concentration of the many specialists in a single unit. The advantage of a single unit lies in the fact that more experts in this particular field can be developed in this manner and more attention can be paid to being sure that plans meet the standards specified, rather than in devoting attention largely to the tax collection problems involved. As a result, the amendment follows the provisions of S. 1179 and would create within the Internal Revenue Service a new office of Assistant Commissioner for Employee Plans and Exempt Organizations.

This office will have the responsibility within the Service for enforcing requirements with respect to pension plans and also with respect to charitable foundations and other exempt organizations. This new office should improve the administration of tax laws on pensions by in effect putting all of the pension specialists under a single roof. To finance the cost of administering the retirement plans as well as exempt organizations, the amendment, like S. 1179, imposes a $1 audit fee excise tax and authorizes the appropriation of receipts from this tax—as well as one-half of the 4 percent excise tax on investment income of private foundations—to be devoted to the administrative costs of this new office.

Also, like S. 1179, the amendment requires administrators of qualified plans to file an annual statement which will be turned over to the Social Security Administration, indicating the pension rights of those who are leaving employment with an employer. Under the amendment a further modification is made—a copy of this certificate will also be given to the departing employee. This information will be used eventually to notify the former employees as to their pension rights when they reach retirement age. It should be noted that this is a time when, in any event, they will be contacting the social security offices in order to find out the size of their social security benefits. This will be a convenient reminder to them of their private pension benefits.

The provisions I have described up to this point are in S. 1179 but not in S. 4.

Let me turn now to the participation or coverage provisions and the vesting provisions which do appear in both bills and which are quite similar.

Both bills agree that the standards for coverage and particularly for vesting—that is, when an individual's rights to a pension become nonforfeitable—must be raised. At the present time, except where vesting rules are necessary to prevent discrimination, there are no requirements that an individual's rights to a pension vest before retirement. In fact, many pension plans do not provide for vesting until retirement age is reached with the result that when an individual's employment is terminated before retirement age, he may lose all of his rights to a pension plan.

Insofar as coverage under a pension plan is concerned, S. 4 requires coverage be offered to an employee who has had 1 year of service and is 25 years of age or older. S. 1179 also provides for coverage after 1 year of service but only if the individual is age 30 or over. However, S. 1179 has a "look-back" rule which brings the two plans much closer together. Under this provision, once an individual reaches age 30, if

he has been working from age 25, he can take this 5 years into account for purposes of the vesting rule. For those who continue to work until age 30, this means that in practical application, the effect of the two bills is substantially the same.

This amendment follows the basic coverage rule in S. 1179.

The basic vesting rules of the two bills also are quite similar. S. 4 provides for 30 percent vesting after the end of 8 years and full vesting at the end of 15 years. S. 1179 provides for full vesting at the same time, namely at the end of 15 years. However, it provides that vesting must begin somewhat sooner than under S. 4. The vesting under S. 1179 must be at the 25 percent level by the fifth year. The amendment which I am offering follows the basic S. 1179 rules in this respect. It is my understanding that this is wholly satisfactory to the sponsors of S. 4.

At the same time, the amendment incorporates certain aspects of the S. 4 rules. For example, S. 4 provides that as an alternative to its basic vesting rule, a plan will qualify if it provides 100 percent vesting at the end of 10 years, rather than gradual vesting beginning earlier and being completed at the end of 15 years. S. 1179 also permitted this rule as an alternative but only through 1981. The amendment which I am offering follows the S. 4 rule more closely in that plans that already have such a 10-year full vesting provisison can continue these vesting rules indefinitely in the future. However, new plans set up from now on must meet the general vesting rule provided in the amendment, namely 25 percent vesting at the end of 5 years and 100 percent vesting at the end of 15 years.

The amendment also follows the S. 4 vesting rules in that it provides that where an individual is covered for payments into the plan at any earlier date than generally provided under the minimum rules this period must be taken into account for purposes of applying the vesting rules.

Generally, the effective date for the vesting rules to apply is under S. 1179, plan years beginning after December 31, 1975. This rule is adopted in this amendment. However, an exception in S. 4 is also added. It is provided in the amendment that if the Secretary of Labor finds that the implementation of the vesting requirements will impose "substantial economic hardship" he may certify this fact to the Secretary of the Treasury and provide for the postponement of the new vesting rules in such cases for periods up to 5 years. This determination of hardship and the extent of the postponement is to be determined by the Secretary of Labor.

A number of other vesting and participation modifications are also included in the amendment but they represent relatively minor modifications which are described in the technical memorandum which I shall submit for the record.

Mr. President, let me turn now to the subject of the funding of retirement plans. Retirement plans cannot provide financial security to workers unless sufficient amounts of money have been contributed to them to pay the benefits promised. At present, it is clear that a significant portion of retirement plans are not adequately financed.

Both S. 4 and S. 1179 have similar provisions to correct this serious problem. Both bills recognize that for the financial safety of the

workers contributions must be made each year so that the plans will accumulate sufficient funds to pay the benefits when due. At the same time, they recognize that retirement benefits involve substantial cost and, therefore, allow the employers to gradually fund the retirement benefits as the funds are needed.

The funding provisions of S. 4 and S. 1179 are in most respects quite similar and sometimes almost identical. This amendment follows the general format of S. 1179 in the area of funding but incorporates the S. 4 rules where it appears that they give a better result.

Both bills and this amendment provide that "current service costs" should be contributed on a current yearly basis by the employer.

Additionally, many plans give a worker credit for his service that took place before a plan went into effect, or where improvements are made in a plan, apply these improvements with respect to his past service. In these cases a plan has what is called a past service cost liability in addition to the current service cost. S. 4, S. 1179, and this amendment require that initial past service cost generally be amortized by the employer over a period of not more than 30 years. In addition, S. 4 recognizes that multi-employer plans may be more financially secure than single-employer plans and, therefore, allows a longer funding period in these cases. The amendment I am offering follows the S. 4 route and allows a 40-year period to amortize initial past service costs of multi-employer plans. Plan improvements follow the same rules that I have indicated above where they are "substantial;" that is, where they represent 5 percent or more of the past service costs existing on the date of the amendment of the plan.

Because the costs of defined benefit plans essentially are estimates, many future events affect the pensions that eventually are to be paid out and also affect the value of the assets of a pension plan. Where it develops that the estimates of funding requirements are too low, there are said to be experience deficiencies, and where they are too high, there are experience gains. S. 4, S. 1179, and this amendment require experience losses to be amortized over a specified period. S. 1179, which this amendment follows in this respect, requires the amortization to be over the shorter of 15 years or the average remaining service life of covered workers. S. 4 would have required these deficiencies to be written off over a 5-year period. Experience gains are to be written off over the same 15-year period. Plan changes which are not classified as substantial generally also are to be written off over 15 years.

In the case of experience losses and for other purposes, S. 1179 and this amendment also provide the option to use up to a 5-year moving average in determining plan asset values in order to smooth out short-run market fluctuations.

Both S. 4 and S. 1179 recognize that at times an employer will not be able financially to meet the minimum funding requirements and that relief must be offered. This amendment also deals with this problem by providing that the minimum funding requirements be waived in the case of a business hardship. These waived amounts may be amortized over no more than 10 years. This particular feature is drawn from S. 1179 as also is the requirement in the bill that no more than five waivers may be granted in any 10-year period. The amendment follows the lead of S. 4, however, by providing a special rule in the case of multi-em-

ployer plans. If at least 10 percent of the employers contributing to the plan demonstrate to the Secretary of Labor that they would experience economic hardship under the standard funding rules, he may extend the 40-year amortization period for past service costs for a period of up to 50 years.

As I have already mentioned, pension plan costs in no small part must be determined on the basis of estimated costs. These estimates may vary depending on the actuarial assumptions and methods used in calculating them. The rules in this respect in both S. 4 and S. 1179 as well as in this amendment are substantially the same. Standards of competence are set for actuaries who practice with respect to pension plans. They also must meet a standard of reasonableness in choosing the methods and assumptions used in determining plan costs. Certifications must also be made by these actuaries on a recurring basis as to the soundness of the plans under their direction.

Under S. 1179 and also under this amendment, the minimum funding standards are to be enforced through the tax laws. Tax qualified retirement plans will be required to meet the minimum funding standards. As under S. 4, this amendment requires nonqualified plans to meet the minimum funding standards for tax purposes. If an employer fails to contribute the minimum amounts required, he is to be subject to an initial 5-percent excise tax on the funding deficiences. In addition, if the funding deficiences are not corrected within the period allowed, the employer is to be subject to a tax of 100 percent of the funding deficiency. We believe that this will give assurance that the funding requirements are adequately met.

The amendments relating to funding standards are to have the same effective date as the vesting provisions. They will generally go into effect 2 years after the date of enactment for plans now in existence.

Mr. President, let me turn now to a fourth subject dealt with by both S. 4 and S. 1179 as well as this amendment. I am referring to the subject of portability of retirement plans.

Although the mobility of workers within the United States has been increasing steadily, employees who move from job to job have difficulty in earning pension benefits and in collecting the benefits which they have earned. In part this is a question of better vesting rules, which as I have indicated, are provided by this amendment. In addition, however, both bills and this amendment include amendments to set up a purely voluntary portability provision.

Both bills and this amendment provide that workers who change jobs may have their vested retirement credits transferred to a central Government fund which under this amendment would be operated by the Pension Benefit Guaranty Corporation. The fund is to establish an account for each worker on whose behalf it receives money, invest its assets and pay benefits upon the retirement of the worker. Alternatively, the worker may have the amount transferred to a retirement plan of his new employer. These transfers to new employers can be used to buy actuarily equivalent benefits in the new employer's retirement plan. Under S. 1179 and under this amendment, transfers to the central fund and transfers from the fund to the plan of a new employer are to be on a tax-free basis. Also, income earned by the central fund is tax free until such time that it is paid out to the beneficiaries.

Let me emphasize again that this portability program is wholly voluntary for both employers and employees.

This amendment also includes some other tax features of S. 1179. Under this amendment, if an employee receives a complete distribution of his interest in a qualified retirement plan, he generally will not be taxed on the distribution if he contributes it to the central portability fund or to another qualified plan within 60 days after receipt.

Mr. President, let me turn now to a fifth subject which is in both S. 4 and S. 1179. I am referring to plan termination insurance.

Despite the accelerated funding of pension plans required under the amendment, workers may still be deprived of benefits to which they had vested rights where the plan terminates before all of the funds necessary for these benefits have been added to the fund. This termination can occur either where an employer sells his business or merely stops his business. A recent study indicates that 19,400 workers lost benefits in 1972 because of plan terminations in that year. While this is substantially less than 1 percent of retired workers receiving pension payments, nevertheless, for those to whom it occurs, it is a real catastrophe. In addition, there is always the threat hanging over the head of all covered workers that their plan may at some unknown time in the future terminate.

I am glad to say that both S. 4 and S. 1179 provide systems of plan termination insurance. In most respects, these plans are substantially similar. Both bills provide that pension plans are to be funded with insurance premiums paid by the employer. Both bills limit the amount of insurance payable to each plan participant in order to prevent the use of the insurance fund for excessive payments to highly paid employees. Both bills require that plans are to remain in operation for certain periods of time before insurance coverage is provided. Also, under both bills employers are required when they are solvent to reimburse the insurance fund for its losses up to certain limits as a precaution to prevent employers from terminating plans in order to take advantage of the insurance. In most respects, the provisions in the two bills on insurance are quite similar.

Let me turn first to the question of how the insurance program is organized. S. 4 provides that the insurance program is to be administered as an agency under the Secretary of Labor. S. 1179 provides for a separate corporation to be administered by three directors—the Secretaries of the Treasury, Labor, and Commerce—with the Secretary of the Treasury being the chairman unless the directors select another chairman. Under this amendment, we have reached a compromise on the organization of the insurance program. The program is to be handled by a Government corporation, the Pension Benefit Guaranty Corporation, but the Secretary of Labor is to be the chief administrative officer and the Corporation will be a part of the Department of Labor.

The insurance program would be paid for under S. 4 by premiums based on unfunded vested liabilities. S. 1179, on the other hand, imposes a tax of 50 cents per year per plan participant. The amendment I am offering follows the basic rule in S. 1179; that is, in the first 3 years, at least, a tax is to be imposed based upon the number of participants covered. However, in view of more recent loss experience

made available after the conclusion of the committee consideration, this amendment provides that the tax is to be at the rate of $1 per participant instead of 50 cents. This is to be the rate only for the first 3 years, however, and if the trustees of the Corporation find that a lesser tax rate is needed after that time, this can be proposed to the Congress at the end of the 3-year period.

S. 4 would provide that the insurable benefits would under certain conditions be available in the year following the effective date of the bill. S. 1179, on the other hand, delays the coverage for 3 years after the collection of the premium begins—1 year after the date of enactment—to enable the insurance fund to build up enough to cover insured losses. Under this amendment, all plans are to be covered after 2 years of premium collections in any event and the insurance corporation can provide coverage earlier if it estimates that it has enough funds at that time to cover the insurance losses. Under the amendment, generally, premium taxes are to be payable by employers beginning in 1975 and coverage would begin no later than 1977.

The two bills differ to some extent as to the employer's liability to the insurance corporation to reimburse it for losses caused by the employer's terminated plan. Under S. 4 the liability is limited to 50 percent of the employer's net worth. Under S. 1179, it is limited to the lesser of 50 percent of the net worth or 10 percent of the loss. This amendment in this respect more closely approximates the S. 4 rule. Like S. 4, it has no limitation based upon the percentage of the loss. On the other hand, it provides that the liability is not to be greater than 30 percent—instead of 50 percent—of net worth. This would be a sufficient liability to prevent employers from terminating plans only to take advantage of the insurance for themselves and the employees. This permits the elimination of the phasing-in schedule such as is in S. 1179 which would permit only gradual coverage of newly created plans and benefits.

The two bills also differ somewhat in that under S. 1179 employers are given the option of avoiding the liability for the insurance corporation's losses by paying an extra tax of 20 cents per participant per year. No such option to avoid liability is available under S. 4. Under the amendment there is to be the option of avoiding this additional liability by paying a premium to the insurance corporation to, in effect, insure the employers against this liability. This extra charge, since it is to be voluntary, will not be collected as a tax. Also employers if they so desire may elect instead to obtain protection against liability from the private insurance sector.

In the case of multiemployer plans, this amendment incorporates both a provision from S. 4 and a provision from S. 1179. S. 1179 provides that when a large employer withdraws from the plan he must post a bond to cover possible costs arising from his withdrawal from the plan. If the plan should terminate within a 3-year period from the time either the large employer withdraws or any other employer withdraws, they are to be liable for any underfunding attributable to their employment. This will be true only, however, if the plan terminates within 5 years from the time of their withdrawal. In addition, the amendment incorporates a rule in S. 4 which permits the insurance corporation to separate a multi-employer plan into two or more plans whenever it determines that an employer withdrawal has endangered

the rights of employee-participants who were employees of employers who have not withdrawn from the plan.

Other relatively technical changes have also been made compromising differences between the provisions in S. 4 and S. 1179. These will be set forth in the technical memorandums at the end of my statement.

Mr. President, a sixth subject dealt with by S. 4 and S. 1170 is the topic of fiduciary standards.

In this area, the two bills provide in most respects the same fiduciary standards. Under S. 4 these standards are administered by civil action taken by the Secretary of Labor. Under S. 1179, some of these standards were administered by the Secretary of Labor and also involved civil actions. However, under S. 1179, a substantial list of prohibited transactions are also administered by the Internal Revenue Service with enforcement occurring through the imposition of excise taxes for noncompliance.

While the objectives of the two bills in the area of fiduciary responsibility were much the same, the different enforcement procedures made it difficult to reconcile these provisions of the bill. This difficulty was particularly important because those of us sponsoring this amendment do not favor duplication of enforcement efforts.

For the most part, we have obtained what we believe to be a rational division of enforcement of the fiduciary responsibilities between the Labor Department and the Internal Revenue Service. Both the Labor Department and the Internal Revenue Service will have responsibilities with respect to the prohibited transaction provisions. The Internal Revenue Service will have prime responsibility to enforce these rules with respect to parties-in-interest. On the other hand, prohibited transactions concerning fiduciaries are to be primarily administered through the Department of Labor through civil actions. The listing of prohibited transactions in the two cases, however, will be the same and to insure a common interpretation of these provisions, joint regulations and a joint ruling procedure in this respect is to be followed.

In addition, the Secretaries of Labor and Treasury are to be authorized jointly to provide variances or exceptions to the prohibited transactions. These exceptions can either be by broad classes or can deal with individual cases. The variances, however, must not impair the plans involved, must not present serious administrative problems, and must provide adequate safeguards for the participants. Any information as to variances in these cases is to be made available to the public.

Apart from the prohibited transactions, essentially all of the remaining rules relating to fiduciary responsibilities are to be administered by the Secretary of Labor through civil actions.

The amendment provides that the Secretary of Labor is to have as one enforcement tool a so-called "prudent man rule." Under this rule, fiduciaries are required to discharge their duties with respect to investments and other matters by acting with the same care that would be exercised by a prudent man acting in a similar capacity and familiar with the matter in question. This is presently a provision in S. 4 and is a substitute for a provision relating to "jeopardizing income or assets" which presently is in S. 1179. A second enforcement tool provided for the Secretary of Labor is the provision of S. 4 regarding the prohibition against certain persons convicted of certain crimes holding positions with retirement plans.

I have already referred to the duties of the Secretary of Labor with respect to the prohibited transactions in the case of fiduciaries. He presumably will also find examples of breaches of responsibility in these areas in the case of parties in interest. Presumably, these will be referred by him to the Internal Revenue Services for enforcement through the excise tax procedure.

A fourth tool for enforcing fiduciary responsibility made available under the amendment to the Secretary of Labor relates to rules on investments in employer securities. Under the rules provided, pension funds to the extent of 5 percent may be invested in employer securities, and profit sharing and stock bonus plans generally can be invested in employer securities without limitation. Certain real estate may also be held by the pension, profit sharing, or stock bonus plan where it is leased back to the employer. In the case of pension funds, this is subject to the overall 5-percent limit.

There, of course, may be some situations where the holdings of employer securities already exceed the 5-percent limit provided by the amendment. To provide for situations of this type, relatively easy and long-term transition rules are provided. Fifty percent of the excess holdings must be disposed of within 5 years and the remaining 50 percent in the next 5 years.

The Secretary of Labor will also have the duty to take civil actions against pension, profit sharing, or stock bonus plans whenever he finds that the funds are held or administered other than for the exclusive purpose of providing benefits for participants or defraying reasonable administrative expenses. Provision is made to limit the extent to which retirement funds may be held outside the United States.

As I think you can see from my description of the fiduciary responsibility provision, most of the authority in this area will be under the Secretary of Labor. An exception is made in the case of prohibited transactions involving parties in interest because it is believed that this can be administered more readily through this use of the excise taxes by the Internal Revenue Service. Even in this area, however, there will be commonly defined terms as indicated by the use of joint rulings and regulations.

Mr. President, the seventh category is the reporting and disclosure requirements. The provisions in my amendment relating to reporting and disclosure are identical to those in S. 4 with the exception of some technical changes.

Finally, Mr. President, let me turn to the enforcement provisions. Actually, I have discussed many of the enforcement provisions as I have taken up the discussion of the various provisions in the bills. The enforcement provisions I want to refer to now are additional enforcement procedures which for the most part are set forth in the enforcement title in S. 1179. The first of these relates to the provisions of S. 1179 which provide additional opportunities for redress in the case of disagreement with the decisions of the Internal Revenue Service on pension, profit sharing or stock bonus matters. Under both S. 1179 and this amendment, both employees and employers will be allowed in certain situations to appeal determination letters issued by the Internal Revenue Service to the U.S. Tax Court. In practice, most employers are bound by the Internal Revenue Service determination let-

ters since they are generally unwilling to put into effect provisions in their plans which the Internal Revenue Service says are not allowable even though they may disagree with the Internal Revenue Service's interpretation. The problem arises from the fact that the only way at present they can obtain a judicial determination on an issue of this type is to make the change and run the risk of forgoing tax deductions and disqualifying their plan if the Internal Revenue Service should prove to be correct. The declaratory judgment procedure provided here is an innovation which we believe is desirable because it will permit all interested parties to the controversy to have an opportunity to participate in a realistic manner in the administrative determination and to have an opportunity to contest the Internal Revenue Service's determination of the matter in the courts.

A second enforcement procedure under the amendment provides that with respect to claims under pension plans a procedure for arbitration must be provided in the plans themselves. The Department of Labor will provide by regulation for the type of arbitration service provisions which are to be incorporated in the pension and various other plans.

Finally, the bill makes provision for a $1 audit fee, excise tax on the employer for each plan participant in a qualified employee plan. As I indicated earlier, this tax is to be used to provide for the administrative costs for the Internal Revenue Service with respect to pension plans.

Mr. President, I think from what I have told you it should be clear that it is a comprehensive amendment that I am presenting to you which will in my opinion coordinate the provisions of S. 4 and S. 1179. I believe that through the careful work of the Members and the staff we have been able to pick and choose the best provisions in each bill and I believe we, in this amendment, have come up with a set of provisions which are better than those in either of the two bills. I urge your support for this amendment.

Mr. President, I suggest the absence of a quorum.

The Presiding Officer. On whose time?

Mr. Nelson. The time not to be charged against the bill or the time on either side.

The Presiding Officer. Is there objection? The Chair hears none, and it is so ordered.

The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. Nelson. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The Presiding Officer. Without objection, it is so ordered.

Mr. Nelson. Mr. President, I yield to the distinguished Senator from Texas whatever time he may require.

Mr. Taft. Mr. President, will the Senator from Texas yield for a unanimous-consent request.

Mr. Bentsen. I yield for a unanimous-consent request.

Mr. Taft. Mr. President, I ask unanimous consent that Mr. Richard King of the minority staff of the Committee on Labor and Public Welfare have the privilege of the floor during the debate on this measure.

The Presiding Officer. Without objection, it is so ordered.

1973—THE YEAR FOR ENACTMENT OF STRONG PENSION REFORM LEGISLATION

Mr. Bentsen. Mr. President, the U.S. Senate will soon enact an historic and landmark piece of social legislation which will assure that all American working men and women actually receive the pension benefits that they have earned through years of long, hard labor.

Mr. President, final Senate approval of strong pension legislation will mark the very successful conclusion of the dedicated efforts of many of my colleagues on both the Senate Finance and Labor Committees who have devoted so much of their personal time and energy toward reform of our private retirement system. In particular, I would like to pay special tribute to the distinguished chairman of the Senate Labor Committee, Senator Williams, the distinguished ranking minority member of the Labor Committee, Senator Javits, and the distinguished chairman of the Subcommittee on Private Pensions, Senator Nelson, whose efforts have been so instrumental in achieving bipartisan Senate support for meaningful pension legislation. All pension plan participants owe a debt of gratitude to these fine Senators.

Both the Senate Finance and Labor Committees have agreed to support a single bill which combines the major provisions of S. 1179, the Bentsen bill, which was approved by the Senate Finance Committee earlier this year, as well as S. 4, the Williams-Javits bill, which has been approved by the Senate Labor Committee. I am happy to add my full support behind the joint efforts of the Finance and Labor Committees to enact legislation to protect the pension benefits of the American worker.

Over the past several decades, tens of millions of American working men and women have confidently approached their retirement age expecting to receive a sizeable monthly pension.

The expectations of most of these workers have been fulfilled. Generally, America's private retirement system has performed very well for the millions of retired Americans presently receiving their expected retirement benefits.

But, unfortunately, there are thousands of other workers who have not received pension benefits that they have earned. Their dreams of financial security after retirement have been shattered. Promises have been broken. So far as they are concerned, America's private retirement system has failed.

The objectives of the pension legislation we are considering today are twofold: first, to eliminate inequitable aberrations in our private pension system; and second, to prevent an unprincipled employer from taking advantage of his workers.

The purpose of this pension legislation is not to establish an ideal pension plan, but rather, to set up certain minimum standards to assure that all workers receive the pension benefits that they have earned. Congress will be careful to avoid making these standards so tough that they will actually discourage the creation of new pension plans and thereby deny additional workers the opportunity to participate in private retirement plans.

Strong and comprehensive pension legislation must be directed toward two general goals. First, we must safeguard the pension rights which millions of American working men and women have earned. Second, efforts must be made to encourage the tens of millions of work-

ers who do not now participate in the private retirement system to independently save for their retirement.

Let us examine some of the problems with the private retirement system which necessitate congressional action now.

One of the fundamental problems involves the loss of pensions by workers who leave their jobs after long periods of employment but before their earned pensions become vested because of unreasonable vesting requirements. Vesting occurs when an employee receives a nonforfeitable right to the money contributed to a pension plan on his behalf. Vesting may occur after an employee works for a company a specified number of years or after an employee reaches a certain age and years of service. Different pension plans contain different vesting formulas, but once an employee's pension rights are vested, the employee is entitled to receive his benefits at the normal retirement age even if he leaves the company before that time. Wherever an employee goes, he retains an absolute right to any vested benefits he may have earned.

Unfortunately, the system does not always work. There are too many examples in which employees, with many years of service with a company, have been denied absolutely all of their earned pensions because they separated from their jobs just prior to fulfilling unreasonably stringent vesting requirements. They are left without a retirement income which they had confidently anticipated receiving and on which they are dependent for decent survival.

For example, consider the case of Stephen Duane who worked at a New Jersey warehouse for 32 years during which time he was accumulating a pension. The warehouse closed down in 1970, and Stephen Duane lost his job. He was 51 years old at the time, just 4 years short of his company's minimum pension age. As a result, he lost all of his pension rights. Despite 32 years of service, during which time he was earning a pension, Stephen Duane received absolutely nothing.

The experience of Thomas Litchko, a father of five, is equally tragic. Mr. Litchko had been employed by the same Pennsylvania corporation for 20 years, during which time he was earning a pension. In the spring of 1972—when Mr. Litchko was 39 years old—his company closed, and he was informed that he had no vested rights, that he was not entitled to any pension whatsoever. Under the provisions of his pension plan, an employee had to reach the age of 40 before he would receive any vested rights. Thomas Litchko was only 1 year short of vesting and consequently lost 20 years' worth of accumulated pensions.

Another example of unreasonable vesting requirements involves the participants of a union-administered pension plan in Chicago. Each local within this union administers its own pension plan. Under the terms of these plans, a worker must remain within the same local for 20 years in order to acquire any vested rights. Sometimes a slight shift in jobs—perhaps from a loading dock to the weighing station—involves a shift in union locals and a complete loss of all pension rights for an employee with less than 20 years on the first job.

These are only a few examples of the way countless numbers of American working men and women have been tragically victimized by unreasonable vesting provisions in their pension plans.

The need is clear. Congress must establish minimum vesting standards to protect the American worker.

However, a minimum vesting standard by itself will most certainly not provide a complete solution to the problems of the private retirement system. We are aware of many tragic examples in which employees have been denied pension benefits—benefits that had actually vested—simply because the pension plan's assets were insufficient to meet all of its obligations.

This poses two related but very important problems—funding and termination insurance.

I believe that there is a clear need to legislate minimum funding standards so that pension plans are accumulating sufficient assets to meet their obligations. I also believe that it is essential for all pension plans to acquire termination insurance to guarantee payment of all vested benefits in the event that a plan happens to terminate with insufficient assets to meet its obligations.

There have been countless examples of pension plan failures that demonstrate this need. A classic example involves the closing of the Studebaker plant in South Bend, Ind., in 1964 and the accompanying termination of its pension plan. Even though this was a liberal plan which called for the systematic funding of liabilities, there were not enough assets available to pay all claims when the plan terminated. After the assets were distributed, 4,000 vested employees between the ages of 40 and 60 had received only 15 percent of their anticipated benefits. In fact some 2,900 employees under the age of 40, some of whom were vested, were left with absolutely nothing.

Unfortunately, this is far from an isolated example.

Just last month, the Departments of Treasury and Labor released a joint study which indicated that during 1972 alone more than 15,000 pension plan participants lost retirement benefits because their pension plans terminated with insufficient assets to meet all plan obligations. These losses amounted to more than $40 million in anticipated retirement incomes. Several thousand of these victims of pension plan terminations actually lost their entire earned pension, every single cent of it. For these individuals, the collapse of their retirement plan resulted in the loss of 100 percent of their hard-earned pension.

On the basis of this study, we can anticipate that over a 10-year period more than 150,000 American working men and women will see promised pension benefits vanish.

We must not forget that the termination of a retirement plan is much more than a statistic compiled for Government charts. It is much more than a list of numbers or a series of percentages. As the victims of pension plan terminations can easily attest, a termination represents a great personal tragedy.

It was certainly a real tragedy for the retired worker in Minnesota who learned that he might lose his vested pension because his former employer was about to discontinue the retirement plan. This retired worker said:

> If I get a cut in my pension, I don't know what I will do. My wife has been mentally ill for 14 years and had 45 shock treatments and I am doctoring for cancer since 1954. So you can see my health and my wife's are not too good. Her medicine for a year runs over $500 not including mine, so we need all the pension fund we can get.

The experience of Olaf Anderson of Philadelphia provides another illustration. After working for the same company for 48 years, Mr.

Anderson retired in 1970 and began to receive a pension of $100 a month. However, the company pension plan was terminated in 1971, and Mr. Anderson now receives no pension at all. It is interesting to note that this company provided its employees with a booklet describing the pension plan. The booklet informed the employees:

You can look forward to retirement with peace of mind knowing that under the plan there will be a pension check in the mail to you from the company every month for life.

In light of such occurrences, it is not difficult to understand why so many Americans look at the private retirement system as a series of broken promises.

These examples clearly illustrate that minimum vesting standards alone provide no protection to employees when a plan terminates with insufficient assets to cover all liabilities.

Further protection is absolutely necessary. Congress must establish minimum funding standards so that all employers make sufficient contributions to back up all vested benefits over a reasonable period of time. In addition, termination insurance is essential to insure that employees will be protected in the event that their plan does terminate before becoming fully funded.

The concept of termination insurance is certainly nothing new. In fact, it is well established and has proven to be very effective in protecting millions of Americans from substantial economic losses due to such financial mishaps as the failure of a bank or a savings and loan association or the financial difficulties of a brokerage house.

We have long had the protection of the Federal Deposit Insurance Corporation and the Federal Savings and Loan Insurance Corporation. Just 2 years ago, Congress added a new system of termination insurance with the creation of the Securities Investor Protection Corporation.

The Federal Deposit Insurance Corporation, which was created under the Banking Act of 1933 to protect depositors against bank failures, has worked very effectively for 40 years. A depositor is presently insured up to $20,000 in each insured bank. Depositors do not pay for deposit insurance. Rather, each bank pays for the cost of the insurance through semiannual assessments equal to a fraction of 1 percent of the bank's volume of deposits.

Similarly, the Federal Savings and Loan Insurance Corporation was created by the National Housing Act of 1934 to insure savings accounts in insured savings and loan associations. Each savings institution bears the cost of the insurance by premiums paid to the FSLIC. The basic insured amount for each saver is $20,000.

The Securities Investor Protection Corporation—SIPC—was established 2 years ago to guarantee stock market investors against losses stemming from financial difficulties of brokerage houses. SIPC is not a government agency. It is a nonprofit membership corporation whose members include all broker-dealers registered with the Securities and Exchange Commission and all members of securities exchanges. The securities industry is responsible for financing SIPC through assessments by SIPC on its member firms. SIPC members are assessed a percentage of their gross revenues from the securities business.

The existence of the FDIC and the FSLIC for close to 40 years and the recent creation of SIPC provide substantial precedent for a program of pension plan termination insurance and demonstrates its feasibility.

Some will argue that enactment of this legislation would result in excessive Federal interference with the private retirement system. I strongly disagree. A very large number of pension plans already comply with these minimum vesting and funding standards. These plans must serve as a model for others to follow.

I strongly oppose efforts toward a Federal takeover of the private pension system. I believe that the free enterprise system can work effectively in this area but only if a proper balance is reached between the interests of employers and employees. The Federal Government has a long standing policy of encouraging retirement plans by means of the tax laws. It is only fair that this government policy be administered equitably so that employees benefit to the same extent as the employers who establish the plans.

Under the legislation before us, employers and employees will remain free to work out pension plan arrangements best suited to their own particular needs and requirements. This legislation will help our free enterprise system operate more effectively and equitably.

There is no question that any comprehensive program to alleviate the problems of the private retirement system must also focus on the areas of fiduciary responsibility and disclosure. The assets in private pension plans currently exceed $150 billion. It is essential that legislation be enacted to insure that pension plan administrators who handle these vast sums of money discharge their duties solely in the interests of the plan participants and their beneficiaries. Instances of misuse and poor management of pension plan assets demonstrate the need for stricter controls.

For example, the executives of one corporation reportedly used pension plan assets to purchase real estate from the corporation at an inflated price. There have been other examples of companies routinely dipping into pension funds to make corporate acquisitions. These conflicts of interest in the handling of pension funds must be prohibited.

In addition, pension plans must be required to disclose more detailed information to plan participants and the Federal Government. This will facilitate government discovery of illegal uses of pension plan assets.

It is especially important that all communications to employees be presented in a manner that an average participant can easily understand. It is clearly unfair to hold an employee accountable for acts which disqualify him from benefits, if he had no knowledge of these acts, or if these conditions were stated in a misleading or incomprehensible manner in plan booklets.

While legislation is essential to safeguard the pension rights of those Americans who currently participate in private retirement plans, Congress must give equal attention to the tens of millions of workers who do not now have the opportunity to participate in any retirement plan. It is discriminatory to provide special tax benefits for participants of private retirement plans while totally denying any tax benefits to those who presently do not participate.

When I first introduced S. 1179, this bill included provisions for a tax incentive to encourage individuals who do not now participate in retirement plans to set aside a portion of their current income for retirement savings. This concept has been approved by the Senate Finance Committee. Under S. 1179, any individual who is not an active participant in a qualified retirement plan will be permitted to make tax deductible contributions of up to $1,000 a year to his own qualified retirement plan. The aim of this provision is to encourage Americans to save for their own retirement security.

Mr. President, the members of both the Senate Labor and Finance Committees have made an exhaustive study of all aspects of pension reform. The two committees have reached agreement on a single, strong pension bill which will adequately safeguard the pension rights of all American workers without imposing an unreasonable burden on employers. The two committees have carefully selected the provisions in this joint bill to provide adequate treatment to all parties.

I urge my colleagues in the Senate to join me in supporting this landmark legislation.

I have heard a number of Senators speak today of their concern and their long-term interest in pension reform. I congratulate all of them for that. I say that this bill will have many authors. I think it is a major contribution to the improvement of pension plans in this country and to the insurance of retirement benefits.

I urge Senators to support this landmark piece of legislation.

Mr. Williams. Mr. President, will the Senator yield to permit me to make an observation?

Mr. Bentsen. I yield.

Mr. Williams. Mr. President, when our committee began its study—its intensive study—of pension legislation, it did not take long to see where the gaping hole was. It was relatively easy to establish the first principles of national standards for pensions—the need for pensions, for disclosure, for fiduciary, for portability provisions and standards.

The principles, while easily and clearly stated, required a complex understanding of how the new rights to be established could be insured and be real.

We can be more than grateful, indeed, that the Senator from Texas (Mr. Bentsen) brought to reality the need and the understanding of insuring the benefits, this background of knowledge and experience that has become a part of the legislation. It is an absolutely indispensable contribution.

Mr. Bentsen. I thank the Senator from New Jersey for his kind remarks.

Mr. Hartke. Mr. President, will the Senator yield?

Mr. Bentsen. I yield.

Mr. Hartke. What is there in the substitute or in any one of the bills which changes the status quo? Are we not still dealing with the status quo?

Mr. Bentsen. I think there is a major change in the status quo. We have cited some tragic cases in which workers have lost retirement benefits such as the Studebaker case. The committee has provided for stricter funding and vesting standards than are required under present law. We have been told of situations where employees have lost

every cent of their earned pension because their plan had inadequate vesting and funding standards.

We are saying now that when he has worked for a company for 5 years, he has 25-percent vesting. That helps provide a degree of portability. When he has worked for a company 15 years, he is entitled to 100-percent vesting. That is a major change.

Mr. HARTKE. The Senator from Texas referred to the Studebaker case, with which I am extremely familiar. Can the Senator tell me one thing in the bill that would enable an employee to get 1 cent more than he could have gotten under the Studebaker plan? It is my understanding that Studebaker employees would have gotten no more under the bill than they got under the Studebaker plan.

Mr. JAVITS. Mr. President, will the Senator yield?

Mr. BENTSEN. I yield.

Mr. JAVITS. Employees who had been retired or who had been vested under the Studebaker plan, who as it turned out got a percentage of their entitlement, would have gotten their full entitlement because of their insurance. That is exactly what we have worked for, and that is what I have paid tribute to the Senator from Indiana (Mr. Hartke) for having called to our attention some years ago.

The PRESIDING OFFICER. The Senator from Texas has the floor. Has he yielded?

Mr. BENTSEN. I yielded for a question.

Mr. HARTKE. I am asking about funding. Is there anything in the bill on funding that would have applied in the Studebaker case? I am asking whether or not there is anything in the bill.

Mr. BENTSEN. I indicated that this bill would require substantial improvements in many pension plans compared to current law and these comments have been further buttressed by what the distinguished Senator from New York (Mr. Javits) has said concerning the proposal for pension plan termination insurance in the bill. I think that is a major step forward.

Mr. HARTKE. Will the Senator yield further?

Mr. BENTSEN. I do not want to use all of my time.

Mr. HARTKE. Will the Senator not yield for a question?

Mr. BENTSEN. I yield for another question.

Mr. HARTKE. The Senator said there would have been a major change in the Studebaker case on funding. Is that a correct statement on the bill as introduced by the Senator from Wisconsin? Does the Senator from Wisconsin agree to that?

Mr. BENTSEN. A correction on that. I was referring to termination insurance. Termination insurance would have protected many Studebaker employees as well as employees in a great number of pension plans throughout the country.

Mr. HARTKE. Would it have made any difference on portability or vesting?

Mr. BENTSEN. It would have made a difference on termination insurance.

Mr. HARTKE. I assure the Senator that even on termination insurance there would have been practically no benefits, if any at all. My information is that the Studebaker case would have been helped not one iota, even on the termination benefits.

I want to ask a very simple question: Does this bill provide, in fact, any benefits for a worker under 30 years of age?

Mr. BENTSEN. Of course, it provides some benefits for a man under 30 years of age.

Mr. HARTKE. Like what?

Mr. BENTSEN. If he had been working for a company 5 years, he would have received five years of credit toward vesting.

Mr. HARTKE. Will the Senator from Wisconsin agree with the Senator from Texas on that?

The PRESIDING OFFICER. The Senator from Texas has the floor.

Mr. HARTKE. I understand that. I am asking the Senator from Texas whether he will check with the Senator from Wisconsin to find out whether what he just said is true.

Mr. JAVITS. Mr. President, will the Senator yield? We can answer these questions.

Mr. HARTKE. I think they can be answered, too, and I want the record to be correct on it.

Mr. BENTSEN. I said it would help in vesting and eligibility even if he is 30 years of age.

Mr. HARTKE. Talking about a person under 30 years of age, is there any vesting or other benefit under this bill whatsoever before he reaches 30?

Mr. BENTSEN. I am talking about the fact that it works toward his eligibility and vesting rights before he reaches 30 years of age.

Mr. HARTKE. Is there not a direct, positive incentive for every employer to fire a person when he reaches 29 years and 364 days of age?

Mr. BENTSEN. At that point the accrued benefit does not become a material factor, when we are talking about benefits to persons of that age. I am sure the Senator will agree that funding for that man is not at all as important as it is for the older man. Where these cases have arisen is where the employer had more burdensome financial costs for an older person, and he wanted to get rid of that man.

Mr. HARTKE. Is the Senator aware of the fact that the average working time of a woman is about 8 years? Most of these people——

Mr. BENTSEN. Is this part of the Senator's question?

Mr. HARTKE. I wanted to ask the question as to whether or not there are any benefits for men and women under this bill if they are below the age of 30.

Mr. BENTSEN. As I have repeatedly told the Senator from Indiana, there are certain very definite benefits for those under 30, because those years are credited toward their eligibility and vesting and, in addition, the plan is being adequately funded.

Mr. HARTKE. Let me ask this question——

Mr. JAVITS. Mr. President, on that point, I do not think we should let it go——

The PRESIDING OFFICER. The Senator from Texas has the floor. Does he yield?

Mr. JAVITS. Mr. President, I yield myself 5 minutes.

Mr. BENTSEN. I yield my time to the Senator.

Mr. JAVITS. Mr. President, I will yield 5 minutes to the Senator from Texas.

Mr. BENTSEN. I will yield the remainder of my time to the distinguished Senator.

Mr. Nelson. Mr. President, how much time does this side have?

The Presiding Officer. The time of the proponents of the amendment has expired.

Mr. Javits. Mr. President, I yield the Senator from Texas 5 minutes on the bill. I control 1 hour and a half. I yield him 5 minutes on the bill.

The Presiding Officer. The Senator from Texas.

Mr. Javits. Mr. President, will the Senator yield to me?

Mr. Bentsen. I will be delighted to yield to the Senator.

Mr. Javits. The Senator has quite accurately answered the question of 30 years and one's years of service and his qualification to come under the plan to vest, but, as he properly said—and that is a very important point—the prior service of every employee counts in respect of vesting. That is point one.

Point two has reference to the Studebaker case. The fact is that in the Studebaker case they had increased benefits as a result of collective bargaining, but those increased benefits had not been adequately funded. That is the reason why they got into trouble. Under this bill they would be required to fund those increased benefits.

Mr. Hartke. Mr. President, will the Senator yield?

Mr. Javits. Not yet, no. I will answer all the Senator's questions.

Finally, the Senator raised a question about a youth who would be fired just before his 30th birthday. The Senator from New Jersey (Mr. Williams) and I have included an express amendment on that score which would provide a remedy for any person fired such as is provided for a person discriminated against because of race or sex, for example. That is section 699A, which states:

> It shall be unlawful for any person to discharge, fine, suspend, expel, discipline, or discriminate against a participant or beneficiary for exercising any right to which he is entitled under the provisions of the plan.

And so on.

So it seems to me we have made extraordinary reforms in precisely the areas to which the Senator refers.

Mr. Hartke. Let me ask the Senator from New York whether the Senator from Wisconsin will agree——

The Presiding Officer. The Senator from Texas has the floor.

Mr. Bentsen. Mr. President, I yield to the Senator from New York the remainder of my time.

The Presiding Officer. Who yields time?

Mr. Hartke. In the previous——

The Presiding Officer. Who yields time? The Senate is under controlled time, all time having expired to the proponent of the amendment, and the opponents having 30 minutes under the control of the Senator from New York.

Mr. Hartke. Will the Senator from New York yield for a question?

Mr. Javits. Mr. President, I yield myself 1 minute under the bill and yield for a question.

Mr. Hartke. The problem with this bill is that somebody is going to have to ask questions about it. If all the time is going to be taken up by those who are for the bill—and the time is allocated on that basis, apparently—it is going to be hard to get questions out.

Let me ask what administrative procedures are available to the employee. Does he not have to go to court?

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Mr. JAVITS. Yes; but heretofore he had no remedy at all. I know the Senator was one of the most forceful advocates of this right to go to court on the basis of race or sex discrimination. This gives the employee the same right.

Mr. HARTKE. It does not give him any real relief. If he wants help, he should go to the administrative office——

The PRESIDING OFFICER. Who yields time?

Mr. JAVITS. Mr. President, I yield myself 30 seconds.

Mr. HARTKE. Can I ask the question——

Mr. JAVITS. I assure the Senator from Indiana that I will yield enough time to myself under the bill so as to answer his questions.

Mr. HARTKE. With that understanding, I will be glad to defer.

Mr. JAVITS. Mr. President, I ask unanimous consent that Mr. Mittelman of the staff of the Committee on Labor and Public Welfare, may have the privilege of the floor during this debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CURTIS. Mr. President, I yield myself such time as I may use under the amendment.

The PRESIDING OFFICER. The Senator from Nebraska is recognized.

Mr. CURTIS. Mr. President, I wish to commend the distinguished Senator from Texas, who has just spoken, for his part and leadership in this pending legislation. I also wish to commend the distinguished chairman of the Finance Committee (Mr. Long), the chairman of the subcommittee (Mr. Nelson), and my colleague (Mr. Bennett), ranking minority member.

The basis of all private pensions is the tax law. We have private pensions because a payment or contribution to the pension fund is tax-free. Those pension funds grow so they can do the job because the earnings are tax-free.

Under the compromise, these provisions will give protection in reference to vesting, funding, and other matters, which are largely enforceable by excise taxes.

The members of the Committee on Labor and Public Welfare have carried on some worthwhile discussions. They have made great contributions to the consideration of public issues involved here. However, we must keep in mind that the basic premise upon which all of this rests is the tax law. Private pension legislation heretofore, both in the House and the Senate, has been handled by the tax-writing committees.

Mr. President, the private pension legislation which is before us is important to most Americans. It deals with some of the problems in the private pension field, and it is needed legislation. There are features of the bill before us which are not to my liking. I would rather have seen the enactment of the bill I introduced, S. 1631, which has been referred to as the administration's plan. The Finance Committee had before it several bills. They have worked them over and have reported out for passage S. 1179.

This legislation deals with participation requirements, vesting, funding, portability, plan termination insurance, and fiduciary responsibility as they relate to company plans. It makes certain changes with reference to retirement plans for the self-employed. I will discuss these matters later on.

This bill has a new feature in it of great importance and benefit to tens of millions of Americans. Up to now about one-half of the gainfully employed in the United States are covered by pension plans which receive very generous tax treatment. I favor that generous tax treatment. The other half of the gainfully employed people of the United States are not benefited by any existing plan. If an individual works for a company that has a retirement plan the payments, or contributions, made to the retirement fund are tax-free. The earnings of the retirement fund such as interest, dividends, capital gains, and the like are also free of tax. This makes it possible for a rapid growth of the retirement fund.

The individual who is not covered by a company plan or a self-employed plan suffers a marked discrimination. If he wishes to set aside from his earnings for his retirement years he pays tax on all his earnings and then saves afterwards. If such an individual is able to save for his retirement, the earnings on his savings are again taxed at the regular rates. It is very easy to see the discrimination that one half of our people are subject to as contrasted to the other half. The bill before us goes a long way in eliminating that discrimination. It is far-reaching and it is beneficial. It is very urgent that this provision be enacted into law in this Congress.

I have some figures which illustrate the unequal treatment received by our citizens. Let us take the case of two individuals, both of whom have $10,000 taxable income and both of whom earn sufficient money so they can save $50 a month. The individual outside of our established pension plans would have to pay tax on his $50 which would reduce it to $40.50. We will assume earnings on his savings at 5 percent figured on the $40.50 instead of the $50. These earnings, of course, are subject to tax. If such an individual starts this plan at age 35 and continues it until he is 65, he would have accumulated a savings of $27,498 which would pay him a life annuity of $221 a month.

Now if the other individual earns $50 to be saved and he has the benefit of our tax laws for pension plans, the $50 is not taxable so the full amount goes into his retirement fund. We will assume that the earnings are 5 percent a year and that they are tax free. So he has $50 plus 5 percent on the full $50 instead of the lesser amount that the first man has. At the end of 30 years, the latter-mentioned individual would have accumulated savings amounting to $39,864, or enough to pay him a lifetime annuity of $319 per month.

This, compared with the individual outside such plans, who would have $27,498, or $221 a month, is quite a disparity. The legislation reported out by the Finance Committee carries my proposal to correct this. It would permit any individual not covered by a pension plan to save from his earnings for retirement an amount not in excess of $1,000 a year. The savings would be tax deductible, and the earnings on the savings would be tax free. After my plan is in operation both of these men would reap the same amount of retirement benefits, to wit, the $39,864 lump sum or $319 per month lifetime annuity.

Let us consider the case of two other men. We will assume that they each had taxable income of $25,000 a year, which puts them in a higher tax bracket and that each of them can earn for savings $100 a month.

If the one individual earns $100 to be saved and has to pay taxes on the $100 his net savings will be $72 a month. Assuming a 5-percent rate on earnings this man only draws his 5 percent on the $72 instead of the $100 and his earnings are likewise taxed.

If this man starts such a savings plan at age 35 and continues it to age 65, he will have accumulated savings of $45,360 or enough to provide him with a lifetime annuity of $364 a month.

If another man in the same tax bracket who is under a pension program saves $100 a month, his retirement fund is credited with the full $100. Likewise the 5 percent earnings are figures on the full $100 and these earnings are free of tax. If this last-mentioned man starts such a program at age 35 and continues it to age 65, he will have accumulated a savings of $79,728 or enough to pay a lifetime annuity of $597 per month.

This situation must be corrected. It is grossly unfair for one man to receive a lifetime annuity of $221 while someone else gets a lifetime annuity of $319 per month if they both have worked to earn and set aside the same amount for their retirement. We cannot tolerate a situation where one individual with a given amount of earnings and in a given tax bracket earns an annuity of $364 a month while someone else with similar earnings gets the benefit of an annuity that provides him wth $597 a month.

The answer to this situation is to amend the tax laws to provide all individuals who are not covered by the tax benefits of organized pension plans will receive the same treatment. So such an individual can have his retirement savings tax-free and have them earn without the earnings being subject to tax. This is what my proposal does. It was approved by the Senate Finance Committee and it is incorporated in the Senate Finance bill now before the Senate.

The report of the Senate Finance Committee has this to say about this provision of the bill:

> Any individual who is not an active participant in a qualified retirement plan will be permitted under the bill to make tax deductible contributions of up to $1,000 a year of earned income toward his own qualified retirement plan. Both employees not covered by qualified employer-financed plans and self-employed individuals who have not established qualified retirement plans (H.R. 10 plans) will be eligible to establish such individual retirement plans. In addition, the employer of any individual who establishes such a personal retirement plan will be allowed to make tax deductible contributions to that individual retirement account on behalf of the employee which will not be currently taxable to the employee so long as the sum of the employee's own contribution and the employer's contribution do not exceed $1,000.
>
> In order to encourage the widespread use of such individual retirement plans, the committee has provided that the contributions to such plans can be invested in a wide range of investments, including special government retirement bonds which would be issued for this purpose, annuity contracts sold by insurance companies, mutual funds, corporate securities and savings institutions.
>
> The committee further anticipates that by encouraging employers to make modest contributions initially for the retirement needs of their employees, such individual retirement plans will lead eventually to the establishment of a significant number of new qualified retirement plans by employers. An employer who believes he cannot afford the entire cost of a retirement plan can start by contributing small amounts for employee individual retirement accounts, can increase his contributions over the years (but still less than $1,000 per participant), and then can subsequently convert to an employer-financed qualified plan.

The enactment of this proposal will be the greatest forward step ever undertaken in the field of private pensions. It will benefit many millions of people who are not now covered by pensions.

Mr. President, in other words, by the enactment of this part which will be incorporated as a part of amendment No. 497, we will have extended the possibility of retirement savings to one-half of the population. One-half of the population does not have the benefit of a company plan or a self-employed plan.

The provisions of this proposal permit any individual not covered by another plan to save up to $1,000 a year, and that saving will be a tax-deduction. The earnings will be tax free.

The question might be asked, "Why are such individuals limited to $1,000 a year?"

Here is the reason: If a self-employed person wishes to avail himself of the Keogh plan or H.R. 10, as we are to amend it by this legislation, he must extend that pension plan to his own employees. Therefore, he can save, not up to $1,000 a year, but up to $7,500 if the amendments proposed by the Finance Committee are enacted, as I believe they will be.

This new level of protection is extended for individuals. Some of them might be self-employed. Some of them will be employees that work for an employer who does not have a pension plan. And some of them, even though they may be classified as self-employed, are not in a position where they can set up a plan for their employees.

It may be that a man in a small business has no idea who his employees will be 2 years from now, or whether he will be in business. The enactment of this proposal will extend to those individuals a broad range of avenues for them to invest their savings—government savings bonds, insurance plans, trustee plans, and all the rest. It will mean that an individual who is not covered by a company or self-employed plan can, in any calendar year—maybe he will have to miss a few years—save this amount and get the tax incentives for it.

Mr. President, important as the other features are, this particular proposal is the one that is going to do something for the other half of the population that has been long overdue.

Mr. President, two committees, the Senate Finance Committee and the Senate Committee on Labor and Public Welfare have both carried on extensive research and developed comprehensive bills in the area of private pension reform. As would be expected, these two bills take a somewhat different approach to the problem. The bill from the Labor Committee provides for the administration of the new pension provisions primarily through the Department of Labor. The bill from the Committee on Finance provides for the administration of these provisions largely through the Internal Revenue Service.

Despite this difference, however, the bills fundamentally take much the same approach to the basic pension problems involved. They both recognize that in setting minimum standards for pension plans account must be taken of the fact that whether the pension plan is set up in the first place or not is a voluntary action on the part of the employer. Because of this, the standards must not be set so high as to discourage the formation of private pension plans. To do so would be self-defeating.

The two bills have vesting rules which provide for 100 percent vesting after 15 years and provide for gradual vesting for a period of years up to that time. Both bills provide for funding of pension plans on a current basis insofar as current liabilities are concerned but over a long period of years insofar as past service is concerned in order not to overburden employers in this regard. Both bills also provide for a voluntary portability program and for insurance for plans which terminate to be sure the employees who have earned pensions are not deprived of them through the termination of their plans.

Both bills also provide that the plans involved must meet higher fiduciary standards than is true under present law. Here I must admit the two bills perhaps differ more than in the case of some other provisions.

The bill from the Committee on Finance also deals with a number of other tax matters related to pensions. These, of course, are not in the Senate Labor Committee bill. Similarly, the provisions on reporting and disclosure which are in the Senate Labor Committee bill are not in the Finance Committee bill.

It is my understanding that since the committee completed its work certain compromises have been made by the Finance Committee with the Committee on Labor. I was not a party to the conferences and I have not seen the language agreed upon except here in the chamber. I will discuss these features on the basis of the reports given me by those who were present when these compromises were entered into.

In general, the Labor Department is to administer such matters as welfare and pension plan disclosure as well as much of the fiduciary requirements in the bill. In addition, the Secretary of Labor will be the managing trustee of the pension insurance plan. On the other hand, the Internal Revenue Service in large part will administer the new requirements relating to coverage, participation, vesting, and funding. This conforms closely to the historic division of responsibility between the two departments and I believe strongly that we will get the best results if we adopt this procedure. As a practical matter, it is essential for the Internal Revenue Service to administer the provisions I have just enumerated since in any event, the Service would have to continue to examine the coverage, vesting, and funding provisions and practices of particular plans in order to determine whether they qualify under the Internal Revenue Code and to determine whether the employer is entitled to take deductions for his pension contributions.

Mr. President, how much time do I have remaining?

The Presiding Officer. The Senator has about 13 minutes remaining.

Mr. Curtis. I would remind the Chair that I believe I only have 15 minutes at my disposal.

The Presiding Officer. No, the Senator had 30 minutes on the amendment. It was 30 minutes to the side on the amendment.

Mr. Curtis. But does not the distinguished Senator from New York have 15 minutes of that?

The Presiding Officer. The time was to be divided between the proponents of the amendment and the opponents of the amendment, and the Senator from Nebraska, I understood, had control of the opposition time.

Mr. CURTIS. Mr. President, I support the amendment. I think that I have jurisdiction of the time by reason of the fact that in that case, the minority leader is in charge of the opposition time and he has stated that one-half of his time shall be controlled by the distinguished Senator from New York and the other half controlled by the junior Senator from Nebraska.

The PRESIDING OFFICER. The Chair was not aware of that agreement. If that is true, the Senator from Nebraska's half of the time has expired.

Who yields time?

Mr. WILLIAMS. Mr. President, it is my understanding that we all support this amendment. But there is an hour to be divided between the majority and the minority, and it is my understanding that the Senator from New York, in charge of part of the time, wanted the Senator from Nebraska to have as much time as possible within the half hour.

The PRESIDING OFFICER. That was the understanding of the Chair. There remains 10 minutes.

Mr. CURTIS. All right. I shall proceed, then.

In addition, experience has shown that properly designed tax provisions administered by the Internal Revenue Service can play an important role in stimulating the development of desirable pension plans. This is evidenced by the outstanding growth and development of nondiscriminatory pension plans over the past three decades as a result of legislation granting favorable tax treatment where plans qualify as nondiscriminatory in favor of executives and highly paid employees as compared to the rank and file of employees. This legislation continues this historic approach by continuing to grant the favorable tax treatment to plans which comply with the new requirements and by imposing tax penalties in certain cases where there is failure to comply.

I also believe this legislation is significant because it takes major steps to provide fairer treatment for the retirement savings of different taxpaying groups. There has long been a crying need to allow individuals not covered by pension plans to establish their own retirement plans with some of the tax advantages now accorded to those covered by pension plans. I am glad to note that this legislation meets this need. As I will indicate in greater detail in just a little while, it also provides fairer treatment for the self-employed as compared with corporate executives under pension plans by substantially increasing the deductible contributions that self-employed people may make for themselves under qualified pension plans.

Still another provision is designed to limit the advantages of proprietary employees under pension plans. In my opinion, as we first reported this provision out of the Finance Committee, it was much too restrictive. There was no such restriction in the administration bill. For that reason I was happy when we reconsidered this problem this last Friday and substituted what I consider more reasonable restrictions.

I think the best way to explain why I think this is good legislation which deserves support is to go into the details of some of the major provisions.

The minimum vesting provisions, for example, have been carefully structured to accord very real protection to employees and yet at the same time to avoid increasing the costs of financing pension plans to the point where the development of pension plans would be impeded. More specifically, qualified plans are required to grant participants vested rights amounting to at least 25 percent of accrued benefits after 5 years of service. The percentage of accrued benefits required to be vested is increased by 5 percentage points in each of the next 5 years and by 10 percentage points in each of the following 5 years after that. This produces 50 percent vesting after 10 years of participation and 100 percent complete vesting after 15 years of participation.

We have also taken considerable pains to provide a reasonable participation requirement, which together with the minimum vesting standard will offer effective protection for employees. As a result, a qualified plan cannot require an employee to serve longer than 1 year or attain an age greater than 30 as a condition of eligibility to participate. As a practical matter, any possible hardship that might otherwise result from the exclusion of employees under the age of 30 is eliminated by the fact that the legislation permits participants in a qualified plan to count up to 5 years of preparticipation service for purposes of determining his minimum vesting percentage. As a result, an individual who starts work with an employer at age 25 could benefit from the vesting provisions when he reached age 30.

I want to add that the vesting provisions in this legislation are structured to do justice to older employees who have accumulated substantial accrued benefits prior to the effective date of this legislation. This is done by making the new minimum vesting requirements apply to all accrued benefits regardless of when such accruals took place. This has the advantage of giving the older employees who have spent most of their working career with the firm the protection of the vesting provision.

Despite the very substantial protection offered to employees, the additional cost involved in the new vesting provision is quite moderate. Overall, these cost increases range from zero to 1½ percent of payroll depending to a large extent on the degree of vesting that the plan already provides.

We realize that existing plans will naturally require some time to adjust to the new requirements. For this reason, the legislation defers the application of the new vesting standards to existing plans until January 1, 1976. Plans adopted after the effective date will be subject to the new minimum vesting standards immediately since in this case there will be an awareness of the provision.

The legislation also provides for transitional procedures to ease the adjustment to the new minimum vesting standards. Existing plans which provide for 100-percent vesting after 10 years of service, for example, will be deemed to satisfy the vesting standard.

We also have provided a reasonable minimum funding standard which will work hand in hand with the vesting standard in protecting pension rights. Under the new funding standard, contributions to qualified plans which provide defined benefits must generally be sufficiently large to pay normal costs—that is, the costs attributable to the

current operations of the plan—and also to amortize the initial unfunded, past service liabilities in level payments over a period of 30 years or less. This constitutes a substantial improvement over present law inasmuch as it requires provision to be made for amortizing past service costs fully instead of merely providing that the contributions be sufficient to meet the interest payments on these unfunded liabilities.

To avoid hardships where plan amendments result in substantially increasing funding costs for past service, the bill provides that past service costs arising as a result of plan amendments which increase unfunded past service costs by at least 5 percent are also to be funded in level amounts over a period of 30 years or less.

We have also made provision for the equitable funding of experience deficiencies that are encountered under pension plans when the actual costs of the plan exceed the costs estimated on the basis of the actuarial assumptions. Under the revised legislation, these experience deficiencies are to be funded over a period of 15 years or the average working lives of those involved whichever is shorter.

In recognition of their special situation, multiemployer plans are allowed to fund past service costs over 40 years. In addition, under certain specified circumstances where it is demonstrated that such a 40-year funding period would create substantial economic hardship, the Secretary of Labor is authorized to extend the period for funding of past service costs to 50 years. However, plans which secure such an extension of time to fund past service costs are not permitted to increase benefits during this period.

The effective dates of the new minimum funding standards are generally similar to those applying to the new minimum vesting standards. As in the case of vesting, we have deferred the application of the new funding standards to existing plans until January 1, 1976, in order to give such plans time to adjust. In addition, the application of the new funding standards may be deferred until 1981 where the Secretary of Labor finds that these standards would impose a hardship.

I am sure that by this time we are all familiar with the unfortunate loss of pension benefits which occurred when Studebaker closed its Indiana plant and terminated its pension plan. A recent Treasury-Labor Department study indicates that the losses of pension benefits due to such plan terminations are small in the aggregate relative to the total pension rights accumulated by employees covered by pension plans. Nonetheless, in view of the disastrous effect that the loss of pension benefits has upon the particular individual concerned, the committee decided that it was desirable to provide for a system of plan termination insurance to protect the rights of covered employees. For this reason, the legislation establishes a Pension Benefit Guaranty Corporation with the Secretaries of Labor, Treasury, and Commerce as directors to insure such benefits. All qualified pension plans which provide defined benefits are required to participate in this insurance arrangement.

The insurance covers vested benefits up to 50 percent of the average monthly wage in the highest 5-year period up to $750 a month. The latter figure is to be adjusted upward as the social security wage base is increased.

The PRESIDING OFFICER (Mr. Biden). All time on the amendment has now expired. Who yields time on the bill?

Mr. CURTIS. I yield myself 10 minutes on the bill.

The PRESIDING OFFICER. The Senator from Nebraska is recognized for 10 minutes.

Mr. CURTIS. Mr. President, a notable aspect of the plan termination insurance is that the employer is made responsible for losses up to 30 percent of his net worth. We believe that this is necessary to encourage responsibility in the establishment of benefit levels and to give an added inducement for the proper funding of plan liabilities. However, the legislation permits employers to eliminate employer liability under certain circumstances through the payment of higher annual premiums to finance the insurance program.

I also want to bring to your attention the fact that the legislation authorizes the Pension Benefit Guaranty Corporation to establish a portability fund to hold sums of money representing the present value of the employee's vested rights when he is separated from his employment. The employee can then either keep such sums of money in the portability fund or can arrange for them to be transferred to his next employer's retirement fund. In addition, the legislation makes it possible under certain circumstances for sums representing the employee's pension rights to be transferred directly from one pension plan to another without payment of tax when the employee changes jobs. In view of the fact that it frequently is difficult to place a value on employee's rights under different pension plans which have different features, the legislation does not require the portability arrangements to be utilized, but rather authorizes such utilization on a voluntary basis where it is agreeable to both the employees and employers involved.

Mr. President, the junior Senator from Nebraska does not feel that portability is of such magnitude that it should be in this measure. Nevertheless, it is part of the so-called compromise between the two committees, and for that reason I have discussed details.

I also believe that broad decisions were made in reference to the termination insurance, both as to increasing the premium over what was originally planned by the Finance Committee and the entire issue of employer liability. These decisions, made in compromising conferences, are rather far reaching. It is my hope that they will have further attention before the proposal becomes law and that the Ways and Means Committee of the House will go into these matters very thoroughly.

Turning to discussing the bill, I point out that, moreover, further protection is offered employees against the loss of pension benefits as a result of failure to claim them by providing that the Social Security Administration is to keep records regarding the vested rights of employees and to furnish this information to employees. It is my understanding that this can be computerized and that the Social Security Administration can render this service without any great amount of expense or complications.

Another major objective of this legislation is to encourage better administration of pension plans in the interests of covered employees. This objective is to be achieved through the cooperative effort of both

the Labor Department and the Treasury Department. More effective fiduciary standards are established which the Secretary of Labor will administer. This includes provision for a Federal prudent man rule which is to apply to fiduciaries.

This procedure for Labor Department administration of the fiduciary requirements generally follows that outlined in S. 4.

At the same time, the Internal Revenue Service is also given important responsibilities in the prevention of abuse in the management of pension funds. The present prohibited transaction rules in the Internal Revenue Code are to be replaced by the more stringent prohibited transaction rules outlined in S. 4. Parties in interest who engage in these specified prohibited transactions, which are detrimental to the interests of covered employees, are made subject to nondeductible excise taxes. These taxes, which are designed to operate as a deterrent to actions which are against the interests of the covered employees, start at modest levels and go to higher levels where the transactions are not corrected.

Another issue that we faced in this legislation concerns the investment of pension funds in the employer's securities. There undoubtedly have been many instances in which such investments have worked out well and to the advantage of the employees covered by the pension plan. However, as a general rule, we believe that it is not wise for pension plans to invest in the securities of the employer since if the firm does not prosper, the employees are placed in double jeopardy—they may lose their pension benefits as well as their businesses and their jobs. For this reason, pension plans are prohibited from investing more than 5 percent of their funds in the securities of the employer. There are no such limitations, however, in the case of profit sharing and stock bonus plans. The compromise amendment provides that where employer stock holdings are above the 5-percent level on the effective date of the bill, there is to be up to 5 years to dispose of half the excess and another 5 years before the other half needs to be disposed of.

I would like to turn again now to the tax provisions of this legislation, which appeared in S. 1179 but not S. 4. These provisions, which are designed to provide fairer treatment for retirement savings, are essential to this legislation.

We believe, for example, that it is absolutely essential to provide individuals who are not covered by pension plans with an opportunity to save for retirement under treatment which gives them some of the favorable tax treatment accorded to those who are fortunate enough to be covered by qualified pension plans. The legislation takes what I regard as an historic step in this regard by allowing any individual—including an employee or a self-employed individual—who is not a participant in a qualified retirement plan or Government plan to take tax deductions of up to $1,000 a year for amounts of earned income set aside for his own retirement.

This is the individual retirement plan that I discussed earlier in my remarks.

Where an individual establishes such a personal retirement plan for himself, his employer can make tax deductible contributions to the retirement account of that individual which will not be currently

taxable to him so long as the sum of the employee's contribution and the employer's contribution do not exceed the $1,000 limit.

This provision, of course, does not secure complete equality of treatment for individuals not covered by regular pension plans in view of the limitations placed on the deductible amount that may be contributed to such plans. However, it will provide very real assistance to those with modest incomes in helping them save for retirement purposes. In addition, the fact that employers are allowed to make deductible contributions to the individual retirement accounts will encourage them to start regular pension plans for their employees.

Another important change is designed to secure greater equality of treatment for self-employed people under pension plans compared with corporate executives. Present law discriminates markedly against self-employed people by limiting their deductible contributions to pension plans on their own behalf to 10 percent of earned income up to $2,500 a year. The legislation increases these presently inadequate limits by increasing the allowable deductible pension contributions of self-employed people to 15 percent of earned income up to $7,500 a year—or to the equivalent in benefit levels in the case of fixed benefit plans. This provision is specifically structured to aid the employees of the self-employed, as well as the self-employed individuals themselves in that it limits to no more than $100,000 the amount of a self-employed person's earned income which may be taken into account for purposes of pension contributions. This provides assurance that a self-employed individual, generally will have to set aside in the pension plan an amount equal to 7½ percent of the income of his employees, if he is to take the maximum deduction of $7,500 for himself.

A third change to which the Finance Committee has given very considerable attention concerns the treatment of proprietary employees in closely held corporations. In general, our objective has been to prevent abuse situations in which such proprietary employees secured unduly large advantages as a result of unduly large deductible pension contributions for themselves to pension plans established by corporations which they themselves control. I must confess that we have had considerable difficulty arriving at a provision which will eliminate such abuses and yet at the same time will not place onerous restrictions on bona fide cases.

S. 1179, as reported by the Finance Committee, attempted to do this by applying exactly the same limitations that are to apply to self-employed people to corporate proprietary employees who own at least 2 percent of the stock, and together account for at least 25 percent of the accrued benefits of all employees under the plan. However, I am glad to say that after further consideration, the Finance Committee concluded that this provision is too restrictive. As a result the committee provided two exceptions to this 15 percent—$7,500 limitation insofar as proprietary corporate employees are concerned. One of these exceptions provides that in the case of fixed benefit plans the limitation is not to apply in the case of a proprietary employee whose pension benefit does not exceed 75 percent of his wage in his highest 3 years, but with the limitation that the wage taken into account for this purpose may not exceed $100,000. The committee also provided a limitation with respect to fixed contribution plans. This has the effect

of limiting the contributions set aside for a pension benefit so that they are not likely to result in buildup of a fund which will exceed the maximum limitation I have just outlined in the case of the fixed benefit plans. Furthermore, the committee decided that the rules for integrating social security payments with pensions in determining nondiscrimination requirements for employees should, in the case of these proprietary corporate employee plans, be the regular corporate integration rules rather than the more restrictive rules presently applicable in the case of the self-employed H.R. 10 plans.

The Presiding Officer. The Senator's 10 minutes have expired.

Mr. Curtis. Mr. President, I yield myself 3 additional minutes.

The Presiding Officer. The Senator is recognized.

Mr. Curtis. Mr. President, even after the Finance Committee revised its work there is still a limitation on the amount set aside for pension requirements in the case of smaller corporations, where we refer to proprietary employees. I understand from discussion around the Chamber that the distinguished Senator from South Carolina may move to strike this provision. I am further informed it is very likely that someone will offer an amendment to place the limitation on all corporate pension plans. I am not here to say whether that should be done. I do say it will be difficult to do on the floor, that hearings should be held and the matter should be gone into in depth. It may well be that if events should so turn on the floor it might be desirable to strike this provision that the Committee on Finance has placed in the bill. I believe that if the idea of limitations generally is to be considered that we should not do that by floor action, but hearings should be held in depth so that we do not write a formula to do things we do not desire to do.

Finally, the legislation provides a new procedure for taxing lump-sum distributions from pension plans. This new procedure is required, because the present provision which was adopted in 1969, has involved such great complexities as to be unworkable. The new provision is both equitable and relatively simple, and I am sure it will be welcomed by all taxpayers with lump-sum pension distribution as a significant contribution to the improvement of the tax structure.

Mr. President, I hope you can see from what I have told you that the compromise bill the two committees have worked out is in the main a good bill. It is legislation which I urge you to adopt without delay.

Mr. President, again I repeat that the two amendments to be offered by representatives of the Committee on Finance, amendment No. 496 and amendment No. 497, are absolutely necessary if we are to have just, fair, and workable pension legislation and if we are to equalize the tax burden among our many citizens and to give the tax advantages now enjoyed by one-half to the other half.

I yield the floor.

The Presiding Officer. Who yields time?

Mr. Williams. Mr. President, I yield myself 1 minute to make this observation. I wish to commend the Senator from Nebraska for the contribution he has made to the development of the legislation in the adjustment of the Labor bill with the Finance Committee provisions. This bringing together the substance from both committees in this form is usual here and it is more constructive.

Certainly, the Senator's part, particularly with his illuminating discussion of the bill before us, is most helpful for all members of the committee.

Mr. CURTIS. Mr. President, I thank the distinguished Senator from New Jersey for his kind remarks. I hope he will see fit to support the Committee on Finance in their improvements in the pension plans for the self-employed as well as the bringing of some similar tax benefits to that great army of people outside of those plans.

Mr. WILLIAMS. I know the Senator feels this should be done. The amendment that deals with the self-employed is to be offered shortly by the Senator from Wisconsin, as I understand it. I shall support it at that time.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. On whose time?

Mr. WILLIAMS. On my time.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. WILLIAMS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WILLIAMS. Mr. President, I ask unanimous consent that the time used on the quorum call just rescinded and also the one immediately preceeding it not be charged to the time of the proponents of the bill.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. WILLIAMS. Mr. President, I ask unanimous consent that whatever time is used on the next quorum call come within the same provision.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. WILLIAMS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. NELSON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. Biden). Without objection, it is so ordered.

Mr. NELSON. Mr. President, I ask unanimous consent that Mr. Jeff Peterson, of the staff of the Senator from Connecticut (Mr. Ribicoff), have the privileges of the floor during the debate and votes on the pension reform measure.

The PRESIDING OFFICER. Without objection, it is so ordered.

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RETIREMENT INCOME SECURITY FOR EMPLOYEES ACT

The Senate continued with the consideration of the bill (S. 4) to strengthen and improve the protections and interests of participants and beneficiaries of employee pension and welfare benefit plans.

Mr. NELSON. Mr. President, I call up amendment No. 497.

The PRESIDING OFFICER. Without objection, the amendment will be printed in the Record.

(The text of amendment No. 497 appears on p. 1284.)

Mr. Nelson. Mr. President, I ask unanimous consent that the pending amendment, amendment No. 497, if agreed to, be considered as original text for the purpose of amendment, with the time on the amendment to continue running.

Mr. Griffin. Mr. President, reserving the right to object, and I do not believe I shall object, the ranking minority member of the Committee on Labor and Public Welfare is not on the floor. Neither is the ranking minority member of the Finance Committee present on the floor.

I would like to inquire as to whether this matter has been cleared with them and whether they agreed to it.

Mr. Nelson. The Senator is correct. They have agreed to it.

Mr. Griffin. Mr. President, I thank the Senator.

The Presiding Officer. Is there objection to the request of the Senator from Wisconsin? The Chair hears none, and it is so ordered.

Mr. Griffin. Mr. President, I suggest the absence of a quorum.

The Presiding Officer. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. Griffin. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

Mr. Nelson. Mr. President, was the unanimous-consent request agreed to?

The Presiding Officer. The unanimous-consent request was agreed to.

Who yields time on the amendment?

Mr. Nelson. Mr. President, earlier today I offered an amendment to S. 4 which dealt with the pension matters where the subject matter was much the same in S. 4 and in S. 1179. The amendment I offered was in effect a compromise working out the differences between the two bills.

We will recall that in addition S. 1179 also deals with some tax matters concerned with pensions which were not in S. 4. Those provisions are the subject matter of the amendment which I am offering.

Basically, this amendment deals with four tax subjects. One provides that those who are not covered by a pension plan may set aside up to $1,000 a year in a retirement account. The second provision provides that self-employed individuals may set aside for retirement purposes 15 percent of their earnings up to a maximum of $7,500. Under present law, the amount which they can set aside is 10 percent of their earnings up to a maximum of $2,500. The third change initially would have imposed the same ceiling on proprietary employees of corporations as I have just indicated in the case of self-employed persons. However, having made this decision initially, the Finance Committee soon found that this provision gave rise to a very considerable controversy.

As a result, the Finance Committee reconsidered this provision and provided exceptions to the 15 percent—$7,500 ceiling in the case of these proprietary employees. First, it provided that if they are under what is known as a defined benefit plan, the amount which can be set aside in a tax-free retirement account for them may not exceed 75 percent of their salary in their high 3 years of compensation, but based upon a salary in any of these years of not over $100,000. A comparable exception was added for those who have fixed contribution plans in-

stead of fixed benefit plans. In addition, the committee decided to keep the corporate integration rules for purposes of social security in the case of these proprietary employee plans.

This provision has caused a great deal of controversy, but I believe that the solution the committee has worked out will be satisfactory to those who complained about the earlier decision. There has been some misunderstanding as to what the Finance Committee decision was, but I hope that this has now been cleared up.

I should at this point say that as to the committee decision, I am not personally satisfied with the decision on quite different grounds. I believe that whatever limitation we have should go across the board to all corporate plans. I also believe that a maximum wage base of $100,000 is too high. I will be offering for debate today and vote tomorrow two amendments of my own. One of these will set a lower limitation on the total amount of pension benefits that can be paid in any single year. The maximum limitation would be $45,000. This is 75 percent of $60,000 or a maximum of $45,000.

The second amendment will require that the same pension benefits apply to all corporations, rich corporations, small corporations, closely held corporations, and proprietary corporations.

The fourth change relates to a simplified method for taxing lump sum distributions. Other lesser changes are included, but these represent the principal ones.

I should make it clear that this group of provisions represents Finance Committee decisions, and this is not an attempt to be a compromise with the Senate Labor and Public Welfare Committee in this area since these are strictly tax provisions although relating to pensions and are not matters that were included in S. 4.

Let me turn now to the various provisions to which I referred.

INDIVIDUAL RETIREMENT ACCOUNTS

The first change permits any individual who is not a participant in a qualified retirement plan or governmental plan to take tax deductions of up to $1,000 a year for amounts of earned income set aside for his own retirement. The employer of any individual who establishes such a personal retirement plan is allowed to make tax deductible contributions to the individual retirement account on behalf of the employee which will not be currently taxable to the employee so long as the sum of the employee's own contribution and the employer's contribution do not exceed $1,000 a year. I might add parenthetically that I think that limitation is far too low.

In order to encourage the utilization of such individual retirement plans, this amendment provides that the income set aside by individuals in such plans will be deductible from gross income. As a result, deductions for such investments can be taken even by those taxpayers who do not itemize the rest of their deductions. The earnings on the contributions set aside in such individual retirement accounts will also be tax free until actually distributed to the employee as benefits.

All contributions made to the individual retirement plans are to be immediately vested in the employee covered by the account. This treat-

ment is, of course, proper since the contributions in effect either represent compensation to the employee or come from his own funds.

The funds in the individual retirement account can be invested in a wide variety of assets including insurance annuity contracts, common trust funds maintained by banks, savings accounts, and stock of a mutual fund. In addition, such funds can also be invested in special Government retirement bonds issued for this purpose which would provide for the accumulation of interest until the time of redemption.

Since the objective of the individual retirement account is to encourage retirement savings, the written instrument establishing the retirement account is required to provide that no distributions can be made to the individual prior to age 59½ except in the event of death or disability. Where this requirement is violated, the premature distribution is subjected to a penalty tax of 30 percent. On the other hand, to prevent postponement of tax, the individual retirement plans are required to begin distribution when the individual reaches the age of 70½ and the distributions must then be made at least on a ratable basis over the life expectancy of the individual or of the individual and his spouse.

In general, the proceeds of an individual retirement account are to be taxable to the individual when distributed. Since the contributions to the account will be made with tax free dollars, the individual's basis in the account will be zero so that he will be taxed in full on all receipts. The amounts distributed to the individual are not to be eligible for capital gains treatment or the special averaging rules applicable to lump sum distributions.

This will encourage the individual to withdraw the amounts ratably over the period of his retirement.

In addition, the distribution from the retirement income accounts and the proceeds of qualified retirement bonds are to be treated as retirement income for purposes of the retirement income credit.

I believe that the individual retirement accounts will prove most helpful to individuals who are not covered by qualified pension plans. I do not, of course, make any claim that this provision will secure complete equality of treatment for individuals not covered by regular pension plans in view of the limitations placed on the deductible amounts that can be contributed to the individual retirement accounts. As I said previously, I think the amount agreed upon is too low. However, the provision will provide substantial help to those with modest incomes in regard to their retirement savings. Moreover, the fact that employers are allowed to make deductible contributions to the individual retirement accounts will encourage them to start regular plans for their employees.

HIGHER DEDUCTIBLE CONTRIBUTIONS FOR SELF-EMPLOYED PEOPLE UNDER PENSION PLANS (H.R. 10 PLANS)

The second change increases the maximum deductible contributions that a self-employed individual is allowed to make on his own behalf to a qualified plan. At present, the maximum allowable deductions for such contributions are limited to 10 percent of earned income up to $2.500 a year. This amendment increases the maximum limit on such deductible contributions to 15 percent of earned income up to $7,500

a year. Where the plan provides defined benefits, generally equivalent limitations are imposed in terms of the benefit levels that can be financed.

The amendment also limits to no more than $100,000 the portion of a self-employed person's income which may be taken into account in determining the pension contributions on his behalf. This means that under a qualified nondiscriminatory plan, the employees of the self-employed person will have to receive the benefit of a contribution of 7.5 percent of compensation—including for this purpose any credit for integration with social security benefits—if the self-employed person is to deduct the maximum contribution of $7,500 a year for himself.

After reporting out S. 1179, the Finance Committee provided an additional change which is intended to permit partners who are covered by an H.R. 10 pension plan greater flexibility in adjusting the contributions to such plans on their behalf in order to meet their individual needs and circumstances. At present, the limitations on the allowable deductible contributions—or benefits—under such plans apply to each partner individually. The amendment allows the deductible contributions made to the pension plan on behalf of any individual partner to exceed the 15 percent, $7,500 annual limits, when there were forfeitures under the plan by other partners provided that the total amounts contributed on behalf of all partners do not exceed the sum of the allowable deductible contributions under these limits for all partners taken as a group. This will, for example, permit a pension plan to finance nondiscriminatory pension benefits upon retirement for individual partners who became covered by the plan at a relatively mature age and whose benefits are relatively expensive to finance because the funds necessary to pay for the pension must be accumulated in the relatively short period before retirement.

The amendment also contains a number of provisions to improve the operation of plans covering self-employed people. At present, if a custodial account is used under a plan covering self-employed people, the custodian must be a bank and the investments must be made solely in the stock of regulated investment companies or solely in annuity endowment or life insurance contracts. Because this requirement is too restrictive, the amendment allows the custodian of the account to be someone other than a bank providing that the custodian establishes to the satisfaction of the Internal Revenue Service that it would manage the assets of the account in a manner consistent with the tax law.

EQUALIZING LIMITATIONS FOR PROPRIETARY CORPORATE EMPLOYEES

A third remedial change made by the amendment concerns certain proprietary employees of closely held corporations. The objective is to prevent abuse situations in which such proprietary employees secure unduly large tax advantages as a result of extremely large deductible pension contributions on their behalf to pension plans established by corporations which they themselves control.

The Finance Committee has exercised particular care to structure this provision so that it will achieve its objective without placing onerous restrictions on bona fide cases and disrupting plans under

which proprietary employees receive reasonable pension benefits. In fact, after reporting out a bill which contained such provision, the Finance Committee provided additional changes to assure a fair and effective provision. I think that with the modifications we have made those who opposed our first action should now support the amendment. As I indicated earlier this provision now is in a form which I believe is so generous that it now needs amendment. I plan on my own behalf to offer one or more amendments on this point.

In general, the proprietary employees covered by the provision are individuals owning either directly or through attribution rules at least 2 percent of the total combined voting stock of the corporation or of the total value of the stock of the corporation. However, the provision does not apply unless all proprietary employees who are active participants have more than 25 percent of the total account balances for active participants under a defined contribution plan or more than 25 percent of the present value of all accrued benefits under the plan for active participants under a defined benefit plan. As a result, the limitations imposed by this provision apply only where a substantial portion of the plan benefits are for proprietary employees.

In general, deductible contributions to pension plans on behalf of proprietary employees are made subject to a basic annual limitation of 15 percent of earned income or $7,500. This is the same limitation that applies to deductible contributions for self-employed people under my amendment. In addition, as in the case of self-employed individuals, only the first $100,000 of compensation of the proprietary employee will be taken into consideration in determining the pension contributions for him.

However, two exceptions to this general rule are provided for proprietary employees of corporations other than Subchapter S corporations. The first provides that in the case of defined benefit plans, deductions may be taken for contributions on behalf of proprietary employees sufficient to fund a pension amounting to 75 percent of the average salary for the high 3 earnings years. In other words, the amendment permits nondiscriminatory plans to provide proprietary corporate employees with pensions up to $75,000 a year. However, the contributions to fund such pensions will have to be made over a period of at least 10 years prior to retirement.

The second exception to the 15 percent, $7,500 limitation relates to fixed contribution plans. In this case, the committee decided that the fund which an individual could build up by his tax-free contributions cannot exceed an amount which would provide a pension equal to 75 percent of the amount the individual received in his highest 3 years based on a wage of no more than $100,000. The procedures followed in this case take into account the contributions accumulated in prior years at a standard 6-percent interest rate and provide that contributions made in the current and subsequent years can provide any additional amounts necessary to bring the pension benefits up to the level I have referred to. The contributions, however, are in effect spread evenly up to the period of retirement.

The committee also decided that the integration rules in the case of social security which presently apply to corporations will continue to apply in the case of proprietary corporate employee plans.

To bring the pension treatment of self-employed people and proprietary corporate employees closer together, the amendment extends to plans covering proprietary employees a number of provisions which now apply exclusively to plans of self-employed people. For example, payments under a qualified pension plan to a proprietary employee will have to begin by the time he attains age 70½, and the employee's account will have to be paid out at least ratably over the life of the employee or the lives of the employee and his spouse. Also, if a proprietary employee should die before his entire interest in the plan had been distributed to him, the plan will generally be required to distribute that interest, or purchase an annuity for his beneficiaries, within 5 years after his death.

I think that if you consider the proposed treatment which I have just outlined, you will agree with me that it in no way places unreasonable restrictions on the pension contributions on behalf of individuals. Instead, it constitutes a necessary provision to eliminate abuse situations in which unreasonably large amounts have been contributed to corporate pension plans on behalf of proprietary employees, conferring on them undue tax advantages. In fact, as I have said, I do not consider the provision restrictive enough.

EFFECTIVE DATE

The provisions allowing individuals to establish their own individual retirement accounts and increasing the maximum allowable deductible contributions for self-employed people under qualified plans take effect in plan years beginning after December 31, 1973. The new requirements and limitations under qualified corporate plans covering proprietary employees also are effective for plan years beginning after December 31, 1973, except that proprietary plans in existence on July 24, 1973, will generally be subject to the new contribution limits for plan years beginning after December 31, 1974.

REVENUE EFFECTS OF PROVISIONS DESIGNED TO EQUALIZE TAX TREATMENT UNDER PENSION PLANS

Mr. President, I ask permission to include in the Record a table showing the revenue effects of the provisions that equalize tax treatment under different groups of pension plans, that I have just described. The table shows that the provision increasing the allowable deductible contributions by self-employed people under H.R. 10 plans to 15 percent of earned income up to $7,500 a year involves an estimated revenue loss of about $175 million a year in the long run. Allowing individuals not covered by pension plans to establish individual retirement accounts reduces revenue by an additional $270 million a year. The proposed limitations on contributions and benefits for proprietary employees under qualified corporate plans will result in a moderate increase in revenue. Altogether, these equalizing changes involve an estimated revenue loss of $435 million a year when fully effective.

Estimated annual revenue effects of provisions designed to equalize tax treatment under pension plans

	Millions
Increase in maximum allowable deductible contributions by the self-employed under H.R. 10 plans to 15 percent of earned income up to $7,500 a year [1]	—$175
Allowing individuals not covered by pension plans to deduct up to $1,000 a year for contributions to personal retirement plans (long-run effect) [1]	—270
Applying limitations to contributions and/or benefits for proprietary employees under corporate pension plans [2]	+10
Total, provisions designed to equalize tax treatments under pension plans	—435

[1] Takes effect Jan. 1, 1974.
[2] Takes effect Jan. 1, 1974, for proprietary plans adopted after July 24, 1973, and Jan. 1, 1975, for proprietary plans in existence on July 24, 1973.

GENERAL LIMITATIONS ON BENEFITS AND CONTRIBUTIONS UNDER PENSION PLANS

The amendment contains a provision which applies to all defined benefit plans—including corporate plans without proprietary employees—generally limiting the annual benefits which can be paid out under these plans—as of age 65—to 100 percent of the participant's average compensation from the employer during his highest 3 consecutive years of earnings. A pension is essentially a substitute for earning power during the retirement years and no qualified pension plan should pay defined benefits which are higher than an employee's average earnings during his highest 3 years. It is our understanding that this provision is consistent with present law (Rev. Rul. 72–3, 1972–1 C.B. 105) and this provision is only intended to clarify and make more explicit present law.

In addition, as a corollary to this 100-percent-of-salary limitation for defined benefit plans, the amendment provides that tax excludable contributions to a money purchase plan cannot exceed 20 percent of the employee's compensation.

SIX-PERCENT SALARY REDUCTION PLANS

The amendment also clarifies the law with respect to the tax treatment of 6-percent salary reduction plans. Until recently, the Internal Revenue Service took the position that amounts contributed to a qualified retirement plan on a salary-reduction basis could, under certain conditions, be considered as tax excludable employer contributions to the plan.

Under the committee bill, this treatment is continued with respect to contributions to a qualified pension or profit-sharing plan made prior to January 1, 1974. Thereafter, as is already true under present law in the case of employee contributions under the Federal civil service plan, or similar Government plans, contributions which are really employee contributions—whether required to be made or made at the individual option of the employee in return for a reduction in compensation—are to be treated as such and will no longer be excludable from income by the employee. This treatment is to apply to contributions financed out of a reduction in bonus payments as well as out of a reduction in other

forms of compensation. The only modification in this rule is that where an individual is not covered by a qualified plan, a Government plan, or a section 403(b) annuity plan, employer contributions of up to $1,000 per annum can be made to an individual retirement savings account under a salary reduction arrangement. Income earned on amounts contributed under a salary reduction plan prior to 1974 will for the future remain tax exempt as also will the earnings on these amounts.

SECTION 403(B) ANNUITY PLANS

Under present law, the proceeds of a section 403(b) annuity plan, for the benefit of teachers or employees of tax-exempt organizations, may be invested only in insurance contracts. Because it would be desirable to provide more flexibility in this area, the amendment provides that the assets of these accounts may also be invested in mutual funds, under appropriate custodial restrictions.

LUMP-SUM DISTRIBUTIONS UNDER QUALIFIED RETIREMENT PLANS

The amendment also provides a new improved method of taxing benefits which are distributed or paid in a lump sum from a qualified plan within 1 year on account of death or separation from service. It is widely acknowledged that the present treatment of lump sum distributions which was adopted under the 1969 Tax Reform Act has not proven effective. The present treatment, which taxes the part of the lump sum distribution that represents employer contributions accrued in plan years beginning after 1969 as ordinary income under a special 7-year-averaging procedure, was designed to provide more equitable treatment than the prior capital gains treatment which provided undue tax advantages to high income people. However, the 1969 change has proven to be so complex as to be unworkable. For example, the Treasury has had great difficulty in providing regulations to carry out this provision. Problems have arisen both in determining the amount of the ordinary income element of a distribution and in determining the precise amount of tax imposed on account of the "ordinary income" element. Moreover, in practice the new proposed regulations have proved to be very complex and it is frequently maintained that individuals receiving lump sum distributions have been unable to compute their taxes and that accountants and tax lawyers have been refusing to attempt the computations.

This situation cannot be permitted to continue. For this reason, the amendment provides a new method of taxing lump-sum pension distributions which is relatively simple and yet at the same time equitable. Under the new provision, that portion of the distribution representing the pre-1974 value receives capital gains treatment. The balance of the lump sum distribution is to be taxed as ordinary income under a separate tax schedule—the tax schedule applicable to single exclusions, or consideration of the taxpayer's other income. However, to insure that the tax paid by lower income individuals on their lump sum distributions will generally not be more than under present law, a special minimum distribution allowance is provided under the separate tax rate schedule. In addition, averaging relief is provided for the portion

of the lump sum distribution which is taxed as ordinary income under the separate tax rate schedule by providing 15-year averaging for such income. This, in effect, provides a tax payable at the time of the distribution, but no greater in amount than the taxpayer could expect to pay were the income to be spread over his remaining life expectancy.

This new improved treatment of lump sum distribution from retirement plans is effective January 1, 1974. It is expected to result in relatively small increases in revenue over the next few years since the bulk of the lump sum distributions in these years will be attributable to pre-1974 years. However, after a transition period, this provision is expected to result in annual revenue gains amounting to $35 million a year based on 1973 levels of income.

MISCELLANEOUS PROVISIONS

The amendment also contains a number of miscellaneous provisions which are designed to improve the operation of qualified plans. These include the following changes.

First. Removal of the 5-percent deduction limitation on contributions to qualified pension plans. At present contributions to a pension plan are deductible under three alternative provisions, the "5-percent" method which allows dedeuctions to be taken for contributions not in excess of 5 percent of the annual compensation of the covered employees, the "level cost" method and the "normal cost" method.

Unlike the "level cost" method and the "normal cost" method, the 5-percent limitation on contributions is often unrelated to the funding needs of the pension plan, for it frequently is not determined by the level of benefits provided by the plan. Consequently, the 5-percent method has allowed employers to contribute and deduct more than is reasonably needed to fund a pension plan.

The amendment repeals the 5-percent deduction limitation. Thus, deductible contributions under a qualified pension plan are to be limited under either the "level cost" or the "normal cost" methods.

Second. Retroactive remedial changes to qualified plans. Employers may now retroactively cure defects in employee benefit plans—which do not meet the requirements for tax qualification—by making remedial amendments by the 15th day of the 3d month after the end of the taxable year of the employer in which a plan is newly established. Retroactive remedial changes, however, may not be made with respect to plan amendments.

An additional problem is that even in the case of new plans, the time allowed for remedial changes may be too short for a plan to be cured to qualify as of the year in which it is established.

The amendment provides that retroactive remedial amendments may be adopted to cure a plan regardless of whether failure occurs on establishing a new plan or because of an amendment of an existing plan. The amendment also extends the time to adopt a retroactive remedial amendment to the time—including extensions—for filing the employer's return for the taxable year for which the plan or amendment was put into effect, or to a later time designated by the service. It is expected that the regulations will provide for extension for reasonable cause, such as the filing of a bona fide request for a determination by the service that a plan or plan amendment is qualified.

Third. Reporting and publication of returns. In order that many of the new rules governing qualified plans may be enforced, new reporting and publication requirements are needed.

The amendment restates present law by requiring employers—or plan administrators—who establish or maintain deferred compensation plans to file annual information returns. In addition, the amendment extends this requirement to individuals who establish individual retirement accounts and individual bond purchase plans. Also, to enable the Internal Revenue Service to enforce the limits on contributions to individual retirement accounts, the amendment requires additional information from persons who pay wages to individuals covered under qualified plans.

The amendment makes certain information returns open to inspection by proper officers of the Pension Benefit Guaranty Corporation, in order that the corporation can properly administer the insurance program. In addition, the amendment opens to public inspection applications for a determination that a plan is qualified and that the trust under the plan is exempt, except for plans where the employer has less than 26 employees; annual returns with respect to qualified plans are also open to public inspection. These rules enable plan participants and beneficiaries to easily obtain the full information needed to enforce their plan rights, pursuant to the new rules established in the amendment. With respect to plans of smaller employers, this information will be available only to participants and beneficiaries from the employer and the service; this limitation is established because of the more confidential nature of small business.

The amendment establishes a penalty for failure to file annual returns; the penalty will be $10 for each day that a return is late, up to a maximum penalty of $5,000 for any one failure to file. However, this penalty will not be owed if failure to file is shown to be due to reasonable cause.

Mr. President, I call attention to the absence of a quorum.

Mr. Griffin. Mr. President, I ask unanimous consent that the time for the quorum call not be charged against either side.

The Presiding Officer. Is there objection? Without objection, it is so ordered. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. Javits. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The Presiding Officer (Mr. Helms). Without objection, it is so ordered.

Mr. Javits. Mr. President, I yield 5 minutes out of my time to the distinguished Senator from Ohio (Mr. Taft).

The Presiding Officer. The Senator from Ohio is recognized for 5 minutes.

Mr. Taft. Mr. President, I was pleased to see the distinguished majority leader, Senator Mansfield, lay down S. 4 for consideration by the Senate. My colleagues and I on the Labor and Public Welfare Committee have worked over 3 years on this legisaltion. I would especially single out the distinguished chairman of the committee, Senator Williams, and the distinguished ranking minority member of the committee, Senator Javits, for their leadership on this legislation. I have

been privileged to work with both Senators Williams and Javits, and other members of the committee on this issue and am a cosponsor of the measure before us, the Retirement Income Security Act S. 4.

Enactment of this legislation, I believe, is vital to all American workingmen and women, executives as well as blue collar employees. Private pension plans have become an integral and important part of the future financial security of millions of Americans. Today there are 33,000 private pension plans in this country which affect approximately 35 million participants. These pension programs currently represent an investment of $150 billion and this figure is expected to reach $240 billion by 1980. Unfortunately, during the first 6 months of 1972, 8,400 participants in pension plans lost $20 million in pension benefits due to plant terminations alone. This fact, I think, underlies the necessity for constructive guidelines in this area.

The major points, I believe, that are necessary for sound pension reform are contained in S. 4, but I would like to emphasize a few areas which I feel are very important as we proceed with consideration of this legislation as now amended by the amendment of the Senator from Wisconsin (Mr. Nelson) embodying the various compromise provisions.

The first area is that of fiduciary standards. I believe that this point is very crucial for constructive legislation and that S. 4 takes a very sound approach to establish proper fiduciary standards for managers of pension plan assets. There are, however, two points where I feel slight adjustments must be made with regard to fiduciary standards.

The first is that of investment in employer securities by a pension plan. S. 4 as reported, would permit investment up to 10 percent of the assets of a pension plan in employer securities. I believe this is a sound and sensible approach and have offered an amendment, No. 480, to S. 1179, to permit such transactions. As I understand it, the amendment of the Senator from Wisconsin (Mr. Nelson) arrives at a compromise position on this issue which seems to be reasonably satisfactory.

Second. I believe that an adjustment is necessary in S. 4 with respect to lease transactions by managers of pension plans. Lease transactions between pension plans and employers should not be strictly prohibited if proper safeguards are met. I earlier offered Amendment No. 479 to S. 4 to make the necessary adjustments on this point and will discuss this issue at length later in the consideration of this substantive legislation when we have had a chance to study this particular point.

The next major area necessary for constructive pension reforms is planned termination insurance. Both S. 4 and S. 1179 contain sections—and I believe the substitute contains sections—that would establish a termination insurance plan similar to the FDIC system currently being employed for financial institutions. I believe this concept is necessary and favor the provisions in S. 4 with respect to this point, as was brought out by the Senator from Indiana (Mr. Hartke) in his questioning earlier today about the Studebaker case that particularly stands out as a sore point. There are many other similar cases where plans have been terminated and those on pensions have received less than they were getting or expected to get, and those who had vested

rights found that those vested rights were equally cut to a large degree.

Third. I believe adequate provisions must be made for funding of pension plans. I believe S. 4 adequately covers this question, with the exception of the section for absorption of experienced actuarial deficiencies. S. 4 would only provide 5 years to correct such actuarial deficiencies as opposed to a 15-year period provided in S. 1179.

I understand also that this has been worked out in a compromise form which seems to cover the situation pretty well in the substitute now before us as offered by the Senator from Wisconsin (Mr. Nelson).

I believe that 15 years is far preferable to correct such deficiencies as they often run in the millions of dollars and cannot be corrected in a very short time pattern. I have offered an amendment to S. 4 on this point and am hopeful that the managers of the bill will accept it.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. TAFT. Mr. President, I yield myself an additional 2 minutes.

Mr. NELSON. Mr. President, may I interrupt the Senator for one moment? How much time is left on this side?

The PRESIDING OFFICER. Eighteen minutes.

Mr. NELSON. I thank the Chair.

Mr. TAFT. Mr. President, fourth, it is extremely important to provide adequate provisions for vesting. I believe S. 4 provides such a procedure and is superior to the companion provisions in S. 1179. We are still examining the substitute in this regard and I believe it is satisfactory.

Earlier I referred to statistics for the first 6 months of 1972 regarding loss of pension benefits. These statistics, however, really do not reflect the personal tragedies that many Americans have experienced with regard to termination or reduction of their pension benefits. My office has received hundreds of letters over the last 3 years portraying personal tragedies. I would like to share one of them with the Senate this morning—a letter from Mrs. Dale Andreas of Dover, Ohio. Mrs. Andreas states in referring to the necessity of an adequate pension reform legislation:

> My husband began his employment with the former Marsh Wall Products, now a division of a national corporation in 1933, two years after the plant started in business. He had just graduated from Dover High School and began working the next day. He helped build this plant into a multi-millionaire corporation with many years of employment as a reliable, dedicated and loyal employee. He became a salaried employee and a production foreman about 25 years ago. He has been with that company 39 years. He is now 58 years old.
>
> Last February 4, 1972, he was abruptly terminated by a newly-hired production manager.
>
> Terminated, along with my husband, were other salaried employees who also had been employed for thirty-three down to fifteen years with this company. All were in the 50-plus age group. They were terminated without cause, given no reason.
>
> These men have lost their jobs, insurance, and pension benefits which they could have collected at 65, had they continued to work.
>
> My husband, the *only* older employee, had a vested interest in his pension, so he accepted (forced to) early retirement. Instead of the $400.00 he would have been entitled to at age 65, he had to accept $150.00.
>
> Now at age 58, at a time my husband should be looking forward to a comfortable retirement at age 65, he has had to accept a laboring job at $2.85 an hour, just to buy food and pay the utilities and insurances. We still have a mortgage on our home and a son in high school (a senior next year). We had hoped to send him to college.

Unfortunately, I had to reply to Mrs. Andreas that there was no Federal legislation that would protect her husband, but I am hopeful that the replies I send to similar letters in the future will be positive. I ask unanimous consent that Mrs. Andreas' letter be printed in its entirety in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

DOVER, OHIO, *June 1, 1972.*

Senator ROBERT A. TAFT, Jr.,
Cincinnati, Ohio.

DEAR SIR: I just read with great interest in the morning Plaindealer that you are holding hearings about private pension programs in Cleveland on Monday, June 5, 1972.

I would like to relate to you what happened to my husband and many other employees of Marlite Division of Masonite Corporation in Dover, Ohio, and in other branches of this Division.

My husband began his employment with the former Marsh Wall Products, now the Marlite Division of Masonite, in 1933, two years after the plant started in business. He had just graduated from Dover High School and began working the next day.

He helped build this plant into a multi-millionaire Corporation with many years of employment as a reliable, dedicated and loyal employee. He became a salaried employee and a production foreman about twenty-five years ago. He has been with the Company thirty-nine years. He is now fifty-eight years old.

Last February 4, 1972, he was abruptly terminated by a newly-hired production manager. Terminated, along with my husband, were other salaried employees who also had been employed for thirty-three down to fifteen years with this company. All were in the fifty-plus group. They were terminated without cause—given no reason.

My husband and I feel sure it was done to remove these men, who would soon be eligible for pensions, from the pension and insurance programs. They lost their group life, hospitalization, and extended medical insurance, and were given the "generous" option of leaving their contributions in the pension fund until they were sixty-five and receiving a much reduced pension; or withdrawing now what they had contributed.

These men have lost their jobs, insurance, and pension benefits which they could have collected at sixty-five, had they continued to work.

At the same time (within about six to nine months period) that these older men were terminated, they were hiring younger men. Of course, it will be many years before they will be eligible for pensions. No doubt, this action by the Company, increases the pension benefits for the Corporate Executives while denying them to the rightful lower echelon employees.

My husband, the only older employee, had a vested interest in his pension, so he accepted (forced to) early retirement. Instead of the $400.00 he would have been entitled to at age 65, he had to accept $150.00.

I understand there is a law passed by Congress in 1968. "The Age Discrimination in Employment Act," which should prohibit this Company from terminating this group of men.

Mr. Samuel Gruly, the immediate President of Masonite Corporation (became Pres.) 1971 was the former Pension Administrator. That suggests to me that he was the mastermind behind this scheme to remove these men from the pension program.

Now at age fifty-eight, at a time my husband should be looking forward to a comfortable retirement at age sixty-five, he has had to accept a laboring job at $2.85 an hour, just to buy food and pay the utilities and insurances. We still have a mortgage on our home and a son in High School—(a senior next year). We had hoped to send him to college. He is a member of the National Honor Society, a good boy of whom we are proud. My husband has always been a hard-working man, good to his family and greatly respected in this community where he has lived all his life. He and a sister have taken care of his widowed mother since 1937. They have kept up her home for her and contributed to her comfort and well being. She gets a minimum Social Security, her only income. She has never had public assistance. She is now 80 years old. Her husband was killed in

an accident on a dangerous saw at the Marsh Lumber Company in Dover, which was owned by or affiliated with the former Marsh Wall Products.

Please excuse this hurriedly written letter. I wanted to get it in the mail immediately so it may reach you before the hearings.

I am sure if Masonite's records were checked, you would find a very large percentage of men in the fifty-plus age group have been terminated in the past year. Some were demoted and there was a general mistreatment of the men prior to termination.

I am sure the company will try to present plausible excuses for their actions. But, being a victim, I know the reason for this immoral, irresponsible and despicable treatment, of long terms, hard working employees. My husband donated many, many hours of time for the good and continued progress of that Company.

Respectfully yours,

Mrs. Dale I. Andreas.

The Presiding Officer. Who yields time?

Mr. Long. I yield myself 10 minutes.

Mr. President, in a press release I issued jointly with Senator Williams last night, we stated that we had agreed to unite behind a good, strong bill that will achieve the goal we all seek—protection of retirement benefits for those nearly 36-million American workers covered by private pension plans.

I believe that the Senate will also achieve the same goal if it accepts the compromise that we have worked out from the Senate Labor and Public Welfare and Senate Finance Committee pension bills.

I think it is a great thing that we have been able to arrive at common objectives with respect to a pension bill, because much needs to be done to improve private pension systems in the United States. Let me cite some examples.

Despite the rapid growth in retirement plan coverage in recent years, one-half of all employees in private nonagricultural employment are still not covered by retirement plans.

Although over two-thirds of the private pension plans presently provide some vested rights to benefits before retirement, as a general rule employees do not acquire vested rights until they have accumulated a long period of service. At present, only one out of every three employees covered under pension plans has a 50 percent or greater vested right to his accrued benefits. Moreover, even among those between age 50 and 60, 58 percent do not have a vested right to 50 percent of their accrued benefits.

In still another area, that of funding, much remains to be done. A 1970 study of 469 plans indicated that one-third of the plans in the study reported a ratio of assets to accrued liabilities of 50 percent or less and 7 percent of the plans actually had a ratio of assets to accrued liabilities of 25 percent or less.

The need for termination insurance is shown by the fact that in 1972 there were over 1,200 plan terminations, resulting in a loss of $49 million of benefits by nearly 20,000 pension participants. The average loss of benefits for the participants amounted to $2,500. It is, of course, true that this represents a small percentage of the workers covered by pension plans, but it still shows that a significant number suffered losses and that there is a need to provide protection against these losses.

We also have heard of examples of the misuse or self-dealing in pension assets. This, too, is something that we certainly must stop.

It seems to me that all of these factors suggest that we must find ways of improving the private pension system.

Both of the bills, the Senate Labor and Public Welfare Committee bill and our bill from the Finance Committee, deal with the problems that I have talked about. Actually, in many respects, the treatment that we provide, in most of the areas I have discussed, is similar.

We were convinced in our committee, however, that the administration of many of these provisions could better be handled through the Internal Revenue Service, which already has substantial administrative duties to perform in examining pension plans. The Senate Labor and Public Welfare Committee, in the interest of finding a common solution to this problem, graciously yielded to us in the administration of the vesting and funding provisions. At the same time, in examining their proposals in the area of fiduciary responsibility, we, too, found that there was much to be said for the Labor Committee position which gave the Department of Labor the primary role in this respect.

In many other areas we also compromised our differences. This has been indicated both in the statement presented to the Senate by Senator Nelson and in the press release on the desk of each Senator, prepared by Senator Williams and myself. In reaching these agreements, we have tried to do so on a basis that will bring the best possible results for everyone in the pension system.

In the development of this compromise position, I would like to acknowledge the truly constructive attitude of the Senator from New Jersey (Mr. Williams), the Chairman of the Senate Labor and Public Welfare Committee, and the Senator from New York (Mr. Javits), the ranking minority member. I believe that they have taken a really objective attitude in helping develop a common position on this pension legislation. At the same time, Senator Williams and Senator Javits also have been pioneers in this area, and they deserve a major portion of the credit for the fact that the pension legislation is before the Senate today. It will be recalled that this is not the first bill which they have developed in this area and their research on pension legislation has been a major factor in providing all of us with a store of knowledge which has enabled us to arrive at the point where we are today.

At the same time, I also want to acknowledge the very substantial efforts of three members of the Senate Finance Committee who also have taken leadership roles in the development of this pension program. One of these is the junior Senator from Texas (Mr. Bentsen), who developed the first approach toward adapting many of the concepts in the S. 4 legislation to procedures administered by the Internal Revenue Service. It was his bill that the committee elected to report with the committee amendments.

I also want to acknowledge the very substantial leadership provided by the Senator from Wisconsin (Mr. Nelson), who is chairman of the Finance Committee Subcommittee on Private Pension Plans. Senator Nelson's subcommittee held extensive hearings both in and out of town on the tax treatment of pensions. Included in his hearing was an excellent set of panel discussions. These hearings enabled the Finance Committee members to focus their attention on the real issues in the pension bill reported by the Finance Committee. Because of his leader-

ship in this regard I asked Senator Nelson to manage the bill on the Senate floor, insofar as the Finance Committee was concerned.

The Senator from Nebraska (Mr. Curtis) also deserves substantial credit for the development of this legislation. He served as the ranking minority member of the Subcommittee on Private Pension Plans, and he introduced a bill on this subject which had an important influence on the direction the Finance Committee took in this regard. His bill, for example, showed us ways of enforcing provisions against self-dealing by means of the imposition of excise taxes. Senator Curtis also took the leadership in the committee in developing the provision which makes up to $1,000 available as a retirement set-aside for persons not covered under any pension system. I am pleased that I was able to help develop this provision into a practicable form.

As I hope Senators can see from what I have said, the efforts on this legislation have been monumental on the part of many Members, and I believe that the spirit of cooperation and compromise which has been shown in the development of this legislation has been outstanding.

I believe the bill agreed upon by the committee members in the compromises is a very good one, and it is one on which I recommend favorable action by the Senate.

The PRESIDING OFFICER. Who yields time?

Mr. LONG. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. On whose time?

Mr. LONG. On the time of the Senator from Wisconsin.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

* * * * * * *

CONSIDERATION OF S. 4 TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that upon the completion of the aforementioned orders tomorrow, the Senate return to the consideration of the unfinished business, S. 4.

The PRESIDING OFFICER. Without objection, it is so ordered.

* * * * * * *

RETIREMENT INCOME SECURITY FOR EMPLOYEES ACT—AMENDMENT

AMENDMENT NO. 503

(Ordered to be printed, and to lie on the table.)

Mr. Curtis submitted an amendment, intended to be proposed by him, to the bill (S. 4) to strengthen and improve the protections and interests of participants and beneficiaries of employee pension and welfare benefit plans.

[The text of amendment No. 503 follows:]

Calendar No. 119

93d CONGRESS
1st Session

S. 4

IN THE SENATE OF THE UNITED STATES

September 18, 1973
Ordered to lie on the table and to be printed

AMENDMENT

Intended to be proposed by Mr. Curtis to S. 4, a bill to strengthen and improve the protections and interests of participants and beneficiaries of employee pension and welfare benefit plans, viz:

Beginning on page 14, line 3, in amendment 496, strike everything through and including line 7 and insert in lieu thereof the following:

"(A) Year of service.—The term 'year of service' means a calendar, plan, or fiscal year during which the employee is employed by the employer or the anniversary date of his employment (whichever is applied on a consistent basis under the plan): *Provided, however,* That in determining whether or

Amdt. No. 503

not the employee has completed 1 year of such service, a period of 5 months or more in any such calendar, plan, or fiscal year shall be aggregated.".

AMENDMENT NO. 504

(Ordered to be printed, and to lie on the table.)

Mr. Buckley submitted an amendment, intended to be proposed by him, to the amendment (No. 497) proposed by Mr. Nelson to Senate bill 4, supra.

AMENDMENTS NOS. 505 AND 506

(Ordered to be printed, and to lie on the table.)

Mr. Nelson submitted two amendments, intended to be proposed by him, to the amendment (No. 497) to Senate bill 4, supra.

AMENDMENT NO. 507

(Ordered to be printed, and to lie on the table.)

Mr. Tunney. Mr. President, I am today submitting an amendment to the compromise version of S. 4. This amendment restores a provision in the bill reported by the Senate Labor and Public Welfare Committee. It directs the Secretary of Labor to study and report to Congress, within 1 year from the date of enactment, on changes in existing law and regulations needed to protect high-mobility employees against unreasonable forfeiture of pension credits as a result of the frequent job changes which are inherent in the conduct of their professions.

Thousands of aerospace and defense workers in California and around the Nation change jobs with above average frequency to meet the changing needs of our space and defense establishments. They need and merit the special attention this amendment would provide.

At this point, I ask unanimous consent to have my amendment printed in the Record.

There being no objection, the amendment was ordered to be printed in the Record, as follows:

AMENDMENT NO. 508

(Ordered to be printed, and to lie on the table.)

Mr. Hartke submitted an amendment, intended to be proposed by him, to the amendment (No. 496) proposed by Mr. Nelson to Senate bill 4, supra.

[The texts of amendment Nos. 504–508 follow:]

Calendar No. 119

93d CONGRESS
1st Session

S. 4

IN THE SENATE OF THE UNITED STATES

September 18, 1973

Ordered to lie on the table and to be printed

AMENDMENT

Intended to be proposed by Mr. Buckley to the amendment (numbered 497) proposed by Mr. Nelson to S. 4, a bill to strengthen and improve the protections and interests of participants and beneficiaries of employee pension and welfare benefit plans, viz:

On page 2, beginning at line 19 and ending at line 21. strike "exceed an amount equal to the lesser of $1,000 or his earned income paid or accrued for such taxable year." and insert "be less than the lesser of his earned income paid or accrued for such taxable year up to a deduction of $1,000, nor more than 15 per centum of his earned income paid or accrued for such taxable year, up to a deduction of $7,500."

Amdt. No. 504

Calendar No. 119

93D CONGRESS
1ST SESSION

S. 4

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 18, 1973
Ordered to lie on the table and to be printed

AMENDMENT

Intended to be proposed by Mr. NELSON to S. 4, a bill to strengthen and improve the protections and interests of participants and beneficiaries of employee pension and welfare benefit plans, viz:

In section 702(a) of S. 4 adding section 401(j)(2) of the Internal Revenue Code of 1954 and section 704(a)(1) of S. 4 adding section 404(e)(4)(C) to the Internal Revenue Code of 1954 delete the figure "$100,000" and insert in lieu thereof "$60,000".

Amdt. No. 505

Calendar No. 119

93D CONGRESS
1ST SESSION

S. 4

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 18, 1973

Ordered to lie on the table and to be printed

AMENDMENT

Intended to be proposed by Mr. NELSON to S. 4, a bill to strengthen and improve the protection and interests of participants and beneficiaries of employee pension and welfare plans, viz:

Section 706 of S. 4 is amended by redesignating subsections (f) through (n) as subsections (g) through (o), respectively, and adding the following new subsection (f) which reads as follows:

"(f) LIMITATION ON DEDUCTION FOR CONTRIBUTIONS ON BEHALF OF CORPORATE EMPLOYEES.—Section 404 (relating to deduction for contributions of an employer to an employees' trust or annuity plan and compensation under a deferred-payment plan) is amended by adding at the end thereof the following new subsection:

Amdt. No. 506

"'(g) LIMITATION ON DEDUCTION FOR CONTRIBUTIONS ON BEHALF OF CORPORATE EMPLOYEES.—Notwithstanding the provisions of subsection (a), no deduction shall be allowed for a contribution made for or on behalf of a corporate employee to or under a defined benefit plan or a defined contribution plan if the amount of such contribution or if the benefit provided under the plan exceeds the amount specified as an alternative limitation on deduction or benefits for proprietary employees in subsection (e) (4) and section 401 (j) (2), whichever is applicable'."

Calendar No. 119

93d CONGRESS
1st Session

S. 4

IN THE SENATE OF THE UNITED STATES

September 18, 1973

Ordered to lie on the table and to be printed

AMENDMENT

Intended to be proposed by Mr. Tunney to S. 4, a bill to strengthen and improve the protections and interests of participants and beneficiaries of employee pension and welfare benefit plans, viz: On page 37, after line 2, insert the following:

Sec. 223. The Secretary shall undertake a study of the sufficiency of the vesting provisions of this Act as applied to high-mobility employees, and shall recommend such changes in existing law and regulations as may be appropriate to afford to such employees adequate protection against unreasonable forfeiture of pension credits as a result of frequent job changes inherent in the conduct of their professions. In developing such recommendations, the Secretary shall consult with professional societies, industry representatives, and

Amdt. No. 507

other interested groups with specialized knowledge of the problems of high-mobility workers. The study required by this section shall be completed and submitted to the Congress within a year after the enactment of this Act.

Calendar No. 119

93d CONGRESS
1st Session

S. 4

IN THE SENATE OF THE UNITED STATES

September 18, 1973

Ordered to lie on the table and to be printed

AMENDMENT

Intended to be proposed by Mr. Hartke to the amendment (numbered 496) proposed by Mr. Nelson to S. 4, a bill to strengthen and improve the protections and interests of participants and beneficiaries of employee pension and welfare benefit plans, viz: On page 71, beginning with line 8, strike out through line 23 on page 87, and insert in lieu thereof the following:

TITLE III—PORTABILITY

SEC. 301. FINDINGS.

The Congress finds that it is necessary, in order to provide for the public welfare through the protection of the pension rights of American workers, to establish a program under which an individual's vested right to a deferred benefit under a pension plan may be transferred, upon his separation from employment, to a national program in which it

will be held in trust for him payable upon death, disability, or his attaining normal retirement age, and to provide a limited national pension program of which certain small businesses may avail themselves.

SEC. 302. DEFINITIONS.

(a) For purposes of this title—

(1) "pension plan" means—

(A) a pension plan described in section 401 (a) of the Internal Revenue Code of 1954;

(B) an annuity plan described in section 403 (a) or (b) of such Code;

(C) a bond purchase plan described in section 405 (a) of such Code;

(2) "participant" means an employee who is covered by a pension plan;

(3) "administrator" means the person or persons described in section 3 (15) of the Welfare and Pension Plans Disclosure Act; and

(4) "State" means any of the States of the United States or the District of Columbia.

SEC. 303. PROPOSALS FROM PRIVATE INDUSTRY.

The Secretary of Labor is authorized to receive proposals during the first 9 months after the date of enactment of this Act for the establishment of a program meeting the requirements of section 301. Not later than the end of the 10th cal-

endar month ending after the date of enactment of this Act the Secretary of Labor shall transmit an analysis of all proposals received under this section together with his comments on them and any recommendations, including recommendations for legislation, with respect to such proposals he may have to the Congress. The Secretary of Labor shall furnish copies of any such proposals to the Secretary of the Treasury whenever he receives them and the Secretary of the Treasury shall submit his analysis and comments with respect to such proposals to the Congress not later than the end of such 10th month.

SEC. 304. ESTABLISHMENT OF PROGRAM.

(a) IN GENERAL.—If, within 60 days after the date on which the Secretary of Labor furnishes such proposals to the Congress, there is not reported from any committee of the Congress a measure for the establishment of such a program or, if within 90 days after such proposals are submitted the Congress has not passed and sent to the President a measure to establish such a program, the Secretary of Labor is authorized to establish and operate a program which meets the requirements of section 301.

(b) ELEMENTS OF PROGRAM.—Under any program established by the Secretary under this section—

(1) any employer engaged in a trade or business

in or affecting interstate commerce who maintians a pension plan shall register the plan with the program;

(2) an employee who has a vested right to a deferred benefit under a registered pension plan may request that the administrator of that plan transfer an amount equal to the value of that right to the program upon his separation from service with the employer who maintains the plan;

(3) the administrator of a registered pension plan shall transfer the entire amount described in paragraph (2) to the program upon request made by such an employee in not less than equal installments over a period of not more than 5 years together with interest thereon; and

(4) the amount of an employee's interest transferred to the program, together with any income thereon shall be payable to him or his beneficiaries only in the event of his attaining the age of 60 years, upon his death, or upon his becoming disabled (as determined by the Secretary of Labor).

(c) NATIONAL PENSION PLAN FOR SMALL BUSINESSES.—The Secretary of Labor is authorized to establish a pension plan, which shall meet the requirements of section 401(a) of the Internal Revenue Code of 1954, with such terms and conditions as he may determine to be

appropriate, under which employers of not more than 300 employees may make contributions on behalf of their employees and under which such employees may make contributions.

(d) (1) ACCOUNT ESTABLISHED.—The Secretary shall establish and maintain a separate account for each separate payment received by the program on behalf of each participant.

(2) ITEMS SHOWN IN ACCOUNT.—An account established under paragraph (1) shall identify the participant for whom it is established and shall show—

(A) the name and address of each registered plan which makes a payment under this title on behalf of the participant in whose name such account is established;

(B) the portion of each such payment which constitutes the amount treated under sections 72, 402 (a), and 403 of the Internal Revenue Code of 1954 as the net amount contributed by the participant;

(C) any remaining portion of each such payment; and

(D) the amount which constitutes the income attributable to such account while in the custody of the program.

(e) Approval by Congress.—

(1) In General.—A program established by the Secretary of Labor under subsection (a) shall not be put into effect unless neither House of the Congress object to its being put into effect under this subsection within 60 days after its proposal. The Secretary shall notify the Congress of the establishment of such program and the 60-way period referred to in the preceding sentence shall begin on the first day in which both Houses of Congress are in excess occurring after the Secretary has so notified each House of the Congress.

(2) Exercise of rulemaking power of the senate and the house of representatives.—The succeeding paragraphs of this subsection are enacted by Congress as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they shall be deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of resolutions described in paragraph (3); and they shall supersede other rules only to the extent that they are inconsistent therewith. They are enacted with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner,

and to the same extent as in the case of any other rule of that House.

(3) Resolution.—For the purpose of the succeeding paragraphs of this subsection, "resolution" means a resolution of Congress, the matter after the resolving clause of which is as follows: "That the   does not favor the proposed pension portability program transmitted to Congress by the Secretary of Labor on   .", the first blank space therein being filled with the name of the House in which the resolution is offered and the second blank space therein being filled with the date on which the Secretary's message proposing the program was delivered.

(4) Referral of resolution.—A resolution shall be referred to the Committees on Education and Labor and on Ways and Means of the House of Representatives of the Committees on Labor and Public Welfare and on Finance of the Senate.

(5) Discharge of committee.—If the committee to which has been referred a resolution has not reported it before the expiration of 10 calendar days after its introduction, it shall then (but not before) be in order to move to discharge the committee from further consideration of that resolution, or to discharge the committee from further consideration of any other resolution

with respect to the proposed adjustment which has been referred to the committee. The motion to discharge may be made only by a person favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported a resolution with respect to the same proposed rate), and debate thereon shall be limited to not more than 1 hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to. If the motion to discharge is agreed to or disagreed to, the motion may not be renewed, nor may another motion to discharge the committee be made with respect to any other resolution with respect to the same proposed rate.

(6) CONSIDERATION OF RESOLUTION.—When the committee has reported, or has been discharged from further consideration of a resolution, it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion is highly privileged and is not debatable. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to. Debate on the

resolution shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the resolution. A motion further to limit debate is not debatable. An amendment to, or motion to recommit, the resolution is not in order, and it is not in order to move to reconsider the vote by which the resolution is agreed to or disagreed to.

(7) DEBATABILITY OF MOTIONS.—Motions to postpone, made with respect to the discharge from committee, or the consideration of, a resolution and motions to proceed to the consideration of other business shall be decided without debate. Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution shall be decided without debate.

SEC. 305. TAXABILITY OF TRANSFERS TO OR FROM PORTABILITY PROGRAMS.

(a) AMENDMENTS TO SECTION 402 OF THE INTERNAL REVENUE CODE OF 1954.—Section 402 of the Internal Revenue Code of 1954 is amended by adding at the end thereof the following new subsections:

"(f) TAXABILITY OF TRANSFERS TO PENSION PORTABILITY PROGRAM.—A payment to a portability program

established under section 304 of the Retirement Income Security for Employees Act by a pension plan of an amount representing not less a full discharge liability by that plan with respect to a participant shall not be includable in the gross income of such participant for the taxable year of such participant in which such payment is made.

"(g) TAXABILITY OF PAYMENTS FROM THE PENSION PORTABILITY PROGRAM.—Any amount paid on behalf of a participant from a pension portability program to or with respect to a participant shall be includable in his gross income for the taxable year in which paid to the extent that such amount exceeds the aggregate amount of the related payment to the pension portability program credited to the amount of such participant which is treated as contributed by such participant under subsection (a), section 72, or section 403.

"(h) TAXABILITY OF MANDATORY WITHDRAWAL FROM THE PENSION BENEFIT PORTABILITY FUND.—Any amount paid to a participant under the provisions of section 305(b) of the Retirement Income Security for Employees Act shall be includible in the gross income of such participant to the extent such amount constitutes the amount described in section 304(d)(2)(D) of such Act.".

(b) MANDATORY WITHDRAWALS.—The balance of any account of a participant shall be paid by the program to such

participant within 30 days after notification to the Secretary, by the Secretary of the Treasury that the trust or plan (which made a payment credited to such account) has been determined not to be a qualified trust under section 401 (a) of the Internal Revenue Code of 1954 or not to be a plan which satisfied the requirements of section 404 (a) (2) of such Code at the time such trust or plan made such payment.

SEC. 306. INVESTMENT AUTHORITY.

The Secretary of Labor shall enter into contracts with appropriate persons for the management of funds held in trust by the program for participants, and such persons shall invest such funds in securities of corporations organized within the United States and such other securities as those persons shall determine to be appropriate for the purpose of conserving such funds and producing reasonable amounts of income from their investment. Any income or losses produced from such investments shall be credited to or deducted from the accounts of participants in the program in appropriate amounts. Any voting rights derived from securities in which such funds are invested shall be exercised by a board of trustees elected annually, under the supervision of the Secretary of Labor, by participants in the program.

SEC. 307. ENFORCEMENT.

(a) IN GENERAL.—The Secretary of Labor is authorized to bring actions for equitable relief to prevent or re-

strain violations of duties imposed under this title and under any program established by him under this title.

(b) Civil Penalty.—Any person who fails to perform any such duty shall be liable for the payment of a civil penalty of $500 for each act or omission constituting such a failure, and each day of continued failure shall constitute a separate offense.

(c) Appearance of Counsel.—In any action brought by him under this title the Secretary of Labor may be represented by counsel appointed by him.

SEC. 308. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Secretary of Labor such sums as may be necessary to carry out the provisions of this title.

Retirement Income Security for Employees Act

The Senate continued with the consideration of the bill (S. 4) to strengthen and improve the protections and interests of participants and beneficiaries of employee pension and welfare benefit plans.

Mr. Roth. Mr. President, I rise to urge my colleagues to support Senate bill 1179, the private pension reform legislation.

This bill is the amalgam of many different proposals, heard jointly by the Senate Labor Committee and the Finance Committee, on which I have the privilege to serve. In my opinion, it represents a major breakthrough in retirement security for the millions of American workers who are now covered by corporate or self-employed plans. With its passage and enactment, we will be affirming our promise to insure that economic disaster does not befall those who have worked to earn their pensions.

American labor has provided the backbone of American prosperity. Our collective and individual rewards stem from a feeling that hard work provides not only short term satisfaction, but also long term security. When business conditions threaten to jeopardize the expected retirement income, the Congress cannot be a passive spectator. We must use the initiative that is constitutionally ours to right the wrongs which have occurred in the past.

There are five basic precepts included in the bill. Each is designed to protect the rights of the worker who now participates in a private pension plan.

First, the committee bill seeks to liberalize the vesting practices of companies by establishing a new minimum standard with which companies must comply. This issue of eligibility has all too often been used to the disadvantage of individuals who are approaching their date of participation. Every year, loyal workers are summarily dismissed from service just before they are to become vested beneficiaries. To the man who is on the eve of receiving his rights, this 11th hour news can wipe out years of expected income, and put him back at square one.

Likewise, I have added my support to minimum safeguards for funding pension plans, a step designed to insure that there will be enough money to pay the guaranteed rights of retiring employees.

After all, the Federal Government long ago took steps to make sure that applicants for jobs not suffer discrimination in hiring, and that once on the job, reasonable health and safety standards would protect them from many occupational hazards. I feel it is high time we did something to protect the hard earned pensions which employees have come to depend on more as the high cost of living makes personal saving progressively difficult.

When I served on the Senate Banking Committee, we spent many hours reviewing the insurance funds which now protect the savings deposits and securities investments of the American public.

Banks and brokerage houses contribute to government supervised insurance pools, to protect depositors and customers from the disaster of a bank or brokerage house failure.

I do not see how we can continue to neglect pension plans any longer. While we now protect the more than $300 billion in savings institutions, we provide no safeguard at all for the more than $200 billion in

pension assets that now exist. In a highly mobile economy, as companies merge or liquidate, plan terminations can cause economic panic in the lives of those who worked under the honest assumption they would have a "nest egg" with which to retire: 12,000 employees last year forfeited pension benefits because the plans in which they were enrolled ceased to function.

But, simple statistics on pension failures should be no consolation to us when we realize they are of no help to the families whose livelihoods are jeopardized by the sudden termination of their plan.

We must always be cognizant of the temptation to misuse others' money. And for this reason, I am pleased to see this legislation include new language on the administration of pension trust funds. The bill's fourth objective is to make sure that trust is restored to the management decisions which affect the vast pool of pension savings. I certainly feel that new guidelines are necessary to clarify congressional intent. We must guard these moneys from unscrupulous manipulation or imprudent risk.

Lastly, the bill seeks to triple the amount a self-employed individual can contribute in his own behalf to an annual pension savings program. The familiar Keogh plan has been accepted as landmark legislation, but the economic facts of life have made its $2,500 ceiling inadequate after years of persistent inflation. We have also included further language which would permit workers not covered by pension to set aside $1,000 per year, tax free, from their earnings. This contribution to their retirement would share the same preferential treatment that company contributions now enjoy.

I am confident that these constructive measures will not become a burden to the private economy. In recognizing that only half the American working population is covered under pension plans, we must make sure that the enormous growth of these retirement benefits is not stifled by unduly harsh regulations. I feel that we must do something to induce more people to rely on private savings as a foundation for retirement. Social security benefits can only hope to supplement income received from pension or annuity savings built up over a person's working life.

Mr. President, I call on the Senate to take quick action on this bill, and to urge the House of Representatives to act with dispatch. Every day's delay places additional uncertainty on workers and employers alike. I would hope that this first session of the 93d Congress could be remembered as the time when we at last assured the millions of workers now covered, that their pensions will be ready for them when they are ready to retire.

I yield back the remainder of my time.

The Presiding Officer. Who yields time?

Mr. Javits. Mr. President, I ask unanimous consent that I may request a quorum call without the time being charged to either side.

The Presiding Officer. Is there objection? Without objection, it is so ordered.

Mr. Javits. Mr. President, I suggest the absence of a quorum.

The Presiding Officer. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. Hathaway. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The Presiding Officer. Without objection, it is so ordered.
Who yields time?
Mr. Nelson. Mr. President, how much time does the Senator need?
Mr. Hathaway. Five minutes.
The Presiding Officer. The Senator's time on the amendment has expired.
Mr. Nelson. Mr. President, I yield 5 minutes to the Senator from Maine on the bill.
The Presiding Officer. The Senator from Maine is recognized.
Mr. Hathaway. I thank the Senator from Wisconsin.
The Presiding Officer. The Senator may proceed.
Mr. Hathaway. Mr. President, the bill which is now before the Senate, in particular amendment No. 497, which we are at present discussing, involves various provisions of the tax code which have been designed to encourage individuals and corporations to make donations to pension plans which will have the social advantage of supplementing the social security benefits which the employees of these corporations will receive upon retirement.

However, it does something indirectly, just as many other provisions of the tax code do things indirectly, and it is something which I think could be much better done directly. This comes within the ambit of what is called backdoor spending. We have many examples of this in the tax code. It is estimated that $80 billion is spent every year through the backdoor for what in some cases are worthwhile social purposes. In other cases, however, the social purposes are a little difficult to glean, and in nearly all cases more are benefited than were intended to be benefited. Here that is quite apparently the case, because in most of these pension plans those who are in the upper brackets of income are allowed to deduct sums they want to put away for their own retirement. These are people who undoubtedly could put these sums of money away after they have paid their taxes on them, but their deductions—the deductions are justified on the ground that they are made to encourage these individuals to provide pension plans for employees who could not afford to make deductions on their own. In this way we get some social benefit, according to this argument. But I would think that the estimated $4.2 billion in lost revenue which we would have under these pension plans including plans for Government employees could be better spent directly to cover those people in the country who are making, say, up to $10,000 a year, and limit the coverage to those people, by adding this money to the social security trust fund. This would accomplish the social benefit better than what we are doing under the present law, and also by what we would be doing under the law as it would be amended by what we are discussing here today and will continue to discuss tomorrow.

However, I think any amendment I might offer to eradicate retirement savings completely would receive very little support, and in an effort to be realistic, I am not going to offer such an amendment, but I do think that certain amendments should be offered that would make Amendment No. 497 more equitable than it is at the present time.

I understand that the Senator from Wisconsin (Mr. Nelson) is going to offer amendments tomorrow that will make the benefit structure more equitable by making it run across the board, and by reducing the maximum amount from, I think, $75,000 to $45,000.

I think these amendments are worth while, and when they are offered I shall be happy to support them.

I also think there are some other inequities in the bill that should be corrected. Under the provisions of the bill, each partner would be limited to a $7,500 a year deduction for contributions to a pension plan, but the bill allows other partners who have the same $7,500 deduction to attribute their deduction to one of the other partners. In this way, another partner could get as much as $15,000, $22,500, or more as a deduction by accumulating deductions from the other partners.

Ostensibly the purpose of this is to allow a partner who is, say, 55 years of age, and who cannot, under the $7,500 deduction, accumulate enough money in the 10 years he intends to work, to provide a retirement income that is commensurate with the salary he is earning, and perhaps——

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. NELSON. I yield 5 minutes from the bill to the Senator.

Mr. HATHAWAY. I thank the Senator from Wisconsin. I will try to stay within that 5-minute limit.

Perhaps that is a worthwhile objective, although I think anyone in an income bracket that permits him to deduct $7,500 and put it into a pension plan could also pay taxes on it and put it into the pension plan.

Nevertheless, there is no such restriction on the partnership contribution. A partner does not have to be a certain age. All three partners, for example, could be 25 years of age, and two of them could contribute their share of the $7,500 to the one partner, which would enable the third one to retire at age 55 at an enormous annuity which was provided out of tax-free income.

Mr. NELSON. Mr. President, will the Senator yield momentarily at that point?

Mr. HATHAWAY. Yes.

Mr. NELSON. That provision of the partnership, if my recollection is correct, is opposed by the Treasury to accomplish the purposes to which the Senator has referred. That is to say, if there were a senior partner, or two or three, and there was not that flexibility, it was the feeling of the Treasury, as I recollect it, that probably no pension plan would be established at all.

I personally am not satisfied as to the merits of that proposal, one way or the other. I would think that, if it remains in the bill, on the House side there ought to be some hearings and some further evaluation; but I am not prepared to agree or disagree with the position of the Senator from Maine, because I am not perfectly satisfied, myself, as to the merits of this proposal.

Mr. HATHAWAY. I take it from the Senator that there were no hearings on the Senate side with respect to this provision, but that it was rejected by the Treasury at the last moment.

Mr. NELSON. I will not say there were not. I missed part of the hearings. I do not recollect any testimony. That proposal was not in S. 4 when it came out of the Labor and Public Welfare Committee, and it was not in the bill of the junior Senator from Texas (Mr. Bentsen). I do not think it was in the bill offered by the senior Senator from Indiana (Mr. Hartke). So I think the Senator is correct. I do not

believe there were hearings on that exact provision, and I think I am correct in saying it was opposed by Treasury mainly for reasons already suggested by the Senator from Maine.

Mr. HATHAWAY. I thank the Senator.

There are two other points I would like to cover.

One is the number of employees and the type of employee coverage required in order for a pension plan or profit-sharing plan to be accepted by Treasury for purposes of making deductions. Under the present law a corporation does not have to include all of its employees. It can include just a segment of them. Many pension plans include only salaried employees and do not include those working on an hourly wage.

I understand that since the plan cannot be weighted in favor of those who are making a high income, certain salaried employees who are not in the high income bracket have to be included. Nevertheless, all of the employees in the establishment do not have to be included.

In some cases, where the hourly employees are represented by a labor union, the labor union has a pension plan of its own, and would opt out of a plan the employer might offer; but there are many instances of moderately sized firms throughout the country, those employing 100 to 300 or 400 people——

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. NELSON. I yield the Senator another 3 minutes.

Mr. HATHAWAY. I thank the Senator.

The PRESIDING OFFICER. The Senator from Maine.

Mr. HATHAWAY. Where the employees are not represented by a labor union and where those on an hourly wage are not included in any plans.

If our social purpose is really to supplement social security income, which many of our low-paid employees will be receiving at the time of their retirement, then I think some effort should be made—maybe not all at once—to require a company that adopts a pension plan to include all of its employees. Perhaps this could be done by some mechanism whereby a certain percentage of the employees not now covered would be covered every year. If this were done at a rate of 10 percent more a year, it would take just 10 years to reach our objective of having 100 percent of the employees in a company covered.

Another provision of the law that I think ought to be changed is that portion which allows——

Mr. ROBERT C. BYRD. Mr. President, may we have order in the Senate while the Senator is speaking?

The PRESIDING OFFICER. Let us have order in the Senate. Let the well be cleared.

The Senator from Maine.

Mr. HATHAWAY. Is that provision of the law which allows an employer to deduct for the contribution he is making for his employees beyond that payment which he is already making for the Social Security benefits.

If this method of financing pension plans is truly to be supplementary to the social security system, then I do not believe it is very equitable to allow the employer to count as a contribution for the employee's plan whatever he is now paying toward that employee's social security.

Although I realize that it might be a hardship to eliminate that all at once, certainly I think that we should consider eliminating a portion of it, say 50 percent of it this year and 50 percent or a lesser percentage over the years to come, so that in a short space of time, say 3 or 4 years, it would be eliminated altogether and the law would truly provide for a supplementary method of financing employees' pension plans.

I thank the Senator from Wisconsin for allowing me to speak on the points I have covered. I hope that they can be cleared up before the final passage of the bill.

The PRESIDING OFFICER. Who yields time?

Mr. JAVITS. Mr. President, I wish to engage in a colloquy with the Senator from Wisconsin and the Senator from New Jersey, if they are prepared to do so. The colloquy relates to pension plans for engineers who are self-employed.

Mr. President, I yield myself 1 minute.

The PRESIDING OFFICER. The Senator from New York is recognized for 1 minute.

Mr. JAVITS. Mr. President, I would like to inquire of the managers of the bill concerning the interpretation of a provision added to the bill in committee with respect to "comparability of plans".

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. JAVITS. Mr. President, I yield myself an additional 5 minutes.

The PRESIDING OFFICER. The Senator from New York is recognized for an additional 5 minutes.

Mr. JAVITS. Mr. President, I refer specifically to section 221(c) of the bill, which would amend section 401(a) of the Internal Revenue Code by inserting at the end of paragraph (5) of section 401(a) the following:

"For purpose of determining whether two or more plans of an employer satisfy the requirements of paragraph (4) when considered as a single plan, if the amount of contributions on behalf of the employees allowed as a deduction under section 404 for the taxable year with respect to such plans, taken together, bears a uniform relationship to the total compensation, or the basic or regular rate of compensation, of such employees, the plans shall not be considered discriminatory merely because the rights of employees to, or derived from, the employer contributions under the separate plans do not become nonforfeitable at the same rate. For purposes of determining whether two or more plans of an employer satisfy the requirements of paragraph (4) when considered as a single plan, if the employees' rights to benefits under the separate plans do not become nonforfeitable at the same rate, but the levels of benefits provided by the separate plans satisfy the requirements of regulations prescribed by the Secretary or his delegate to take account of the difference in such rates the plans shall not be considered not to satisfy such requirements merely because of the differences in such rates."

It is the substitute of the Finance Committee which is now pending before the Senate as original text of the bill. I ask the Senator from Wisconsin, and I would also appreciate the attention of the Senator from New Jersey whether I am correct in my assumption, which I base upon the language of the accompanying committee report, Senate Report No. 93–383, beginning at page 53 of the report, that this amendment was adopted in response to a problem described in testimony by various engineering societies?

Mr. NELSON. The Senator from New York is correct.

Mr. JAVITS. Mr. President, I read the testimony of the professional engineers, which appears beginning on page 319 of part 1 of the hear-

ings, and particularly the testimony of their lawyer, Frank Cummings, on pages 322 and 323 of part 1 of the hearings, to the effect that they would like to set up a pension plan run by the professional societies on a multiemployer basis. I would like to ask the manager of the bill if I am correct in my interpretation of 221(c) that this section is designed to permit engineering societies, and professional organizations of other types of employees similarly situated, to establish multiemployer pension plans on behalf of their members?

Mr. NELSON. Mr. President, the Senator is correct. May I say to the Senator, this provision was designed to permit employees—such as engineers, but not limited to engineers or other professionals—to in effect trade off some of their benefits in exchange for earlier vesting. It is so designed that it can be used, for example, whether a single employer maintains two separate plans or maintains one plan for some of his employees and joins in a multiemployer plan for others of his employees, so long as there is an appropriate relationship between the rates of vesting and the levels of contributions or benefits.

As the Senator well knows, the problem of this group is that many of them contract to go to work on an engineering project and work for 1 year, 2 years, or 3 years, and the employer for whom they work does not have vesting until the end of 5 years. So, they could spend their lifetimes going from employer to employer without at any time getting any pension benefits.

Therefore, this amendment would provide that they could have earlier vesting, but at the sacrifice of comparable equal value pension benefits of retirement plan.

Mr. JAVITS. Mr. President, am I correct in stating that, under this section of the bill, if an engineering society goes to an employer who already has a corporate pension plan for all of his employees, and if the engineering society persuades the employer to transfer that employer's engineers out from under the employer's own pension plan and into coverage under the society-run multiemployer pension plan, the employer will then be providing pension coverage under "two plans considered as a single plan," and that qualification of those two plans considered as a single plan now becomes possible under this new section of the Internal Revenue Code?

Mr. NELSON. The Senator is again correct. However, I note that he suggests that because of this amendment the qualification now becomes possible. Present law is unclear on this point and it may be that this could be done under present law. The bill clarifies this point for the future without deciding whether this sort of trade-off could be accomplished under the antidiscrimination provisions of present law.

Mr. JAVITS. Mr. President, I have one final question. I see that there are two sentences in this provision. The first sentence refers to comparability of contributions, and the second sentence seems to refer to comparability of benefits. I know that the engineering societies have a specific pension plan in mind, and so I wish to determine whether that particular type of pension plan is one which would meet the requirements of this section. Assume that an employer already has a defined benefit plan. Assume further that an engineering society has established a money-purchase plan, where contributions are established, and the benefits are simply whatever is in an individual employee's account

when he retires. Am I correct in stating that under those circumstances, section 221(c) would require that the two plans, considered as a single plan, meet the requirements only of the first sentence of the section, and that the second sentence of the section is included to deal with another situation—where both the society and the employer have defined benefit plans?

The Presiding Officer. The time of the Senator has expired.

Mr. Javits. Mr. President, would the Senator from New Jersey yield me an additional 2 minutes so that we do not use up all of our time?

The Presiding Officer. There is only 1 minute remaining on the amendment. That minute remains to the Senator from New York.

Mr. Javits. Mr. President, the Senator from New York yields himself 1 minute on the amendment and 2 minutes on the bill.

I yield now to the Senator from Wisconsin.

Mr. Nelson. The Senator is correct. The first sentence of section 221(c) was included to permit, among other things, the qualification of a multiemployer society-run pension plan for engineers or others similarly situated, in circumstances where the employer has a corporate defined benefit pension plan for his employees, and the society has a money-purchase plan for its members. And it was our intention, in adopting this amendment, to permit among other things an employer to provide pensions for his engineers under the society's multiemployer money-purchase plan, while providing pensions for his other employees under his own defined benefit plan, and to make it possible for the employer, nevertheless, to meet the requirements of the code with respect to nondiscrimination, notwithstanding the fact that the engineers, who tend to be more highly compensated and more highly mobile, are covered by a plan with earlier vesting. The way the bill's language on this point is drafted, if forfeitures in the slower-vesting defined benefit plan result in reductions in the employer's contribution to that plan, then the employer may also have to reduce his rate of contributions to the money-purchase multiemployer plans. The bill's language clarifies the effect of the antidiscrimination provisions. It does not water down the protection afforded by those provisions.

Mr. Javits. Mr. President, I thank the Senator, and I am sure that this explanation will help clarify the legislative history of this provision of the bill, and avoid any unnecessary controversy in its interpretation.

Mr. President, I join in the explanation of the ranking minority member on this side. At the same time, I wish to say that the Frank Cummings referred to in this colloquy was my administrative assistant.

I think we all, and especially I, owe to him the origination of the idea of this bill, which he picked up from a report that the committee used in the Kennedy administration. He really started me on this effort to bring about pension and welfare reform, which has since been carried on by his successor, Mr. Mike Gordon.

The Presiding Officer. Who yields time?

Mr. Curtis. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The Presiding Officer. The amendment will be stated.

The legislative clerk read as follows:

Beginning on page 14, on amendment 496, line 3, strike everything through and including line 7 and insert in lieu thereof the following:

"(A) YEAR OF SERVICE—the term 'year of service' means a calendar, plan, or fiscal year during which the employee is employed by the employer or the anniversary date of his employment (whichever is applied on a consistent basis under the plan): *Provided, however*, that in determining whether or not the employee has completed one year of such service, a period of 5 months or more in any such calendar, plan, or fiscal year shall be aggregated."

Mr. CURTIS. Mr. President, if I may have the attention of those who are assisting in managing the bill, my explanation of this amendment is very brief.

I offer a perfecting amendment to section 201 of the bill. Section 201 adds a new section 410 to the Internal Revenue Code to prescribe minimum standards relating to participation.

The present language would require an employer to include in the plan part-time employees who work as little as 5 months in any calendar, plan, or fiscal year. The net result is to give the part-time or seasonal employee an advantage over the regular full-time employee.

For example, if an employee worked from July 1 to November 30 in 2 different years, he would be credited for 2 years of service for having worked 10 months; whereas the full-time employee who worked the 24 months of the 2 years would only receive the 2 years' credit.

My amendment would modify the definition of 'service' in two ways. First, it would allow the plan to provide that the 1 year service requirement may be measured by the anniversary date of the employee's employment. This is in keeping with current practice. Second, it would provide that periods of employment of 5 months or more in any one calendar, plan, or fiscal year shall be aggregated to determine whether or not the employee has completed 1 year of service. Thus, it preserves the right of part-time employees to participate but it would avoid the advantage they have over the regular employee under the present bill.

It seems to me, Mr. President, that if the greater share of the employees must work 12 months in order to participate for a year, that should be the rule applied to all. At the same time, I think a part-time or seasonal employee, if he works 5 months now and then 5 months in another year, or perhaps more, should be able to aggregate those periods so that he would get full credit for the time he does work.

This is in the nature of a perfecting amendment. I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. JAVITS. Mr. President——

The PRESIDING OFFICER. Who yields time?

Mr. NELSON. Mr. President, I suggest the absence of a quorum, and I ask that the time not be charged to either side.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. JAVITS. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. A quorum call is in progress.

Mr. JAVITS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered. Who yields time?

Mr. Javits. Mr. President, a parliamentary inquiry. Who controls the time in opposition?

The Presiding Officer (Mr. Buckley). The Senator from New Jersey controls the time.

Mr. Javits. Mr. President, will the Senator from New Jersey yield me 3 minutes?

Mr. Williams. I yield 3 minutes to the Senator from New York.

The Presiding Officer. The Senator from New York is recognized for 3 minutes.

Mr. Javits. Mr. President, to explain this situation so that Members may understand it—and I shall be opposed to the amendment although the experts say that it may not make that much difference—it does change the fundamental thrust of the bill as it came out of the Finance Committee and I feel pledged to stand with the committee agreement. So, without in any way being violent about it, let me at least explain to the Senate, as I understand it, what is at stake.

This particular amendment relates to the qualification of an individual to come under a plan. In other words, as it was made clear in the question and answer period a little while ago, an individual must serve a year and be 30 years of age to come under a plan. When he does come under a plan, he gets the benefit of whatever service he has accumulated, but to be qualified as a beneficiary, he must have 1 year of service and be 30 years of age.

The question is, what is defined by 1 year of service? The bill, on page 14, line 3, defines that as 1 year during which the employee is employed by the employer for more than 5 months.

So if he works 5 months or more in that year, he is qualified. However, the question is, is he qualified for the plan and does he get vesting for a full year?

So, for example, when he qualifies and he has already been working 2 years and he has only worked 5 months in each of those 2 years, does he have 2 years of service?

The answer is found on page 20, line 9 of the bill where it says that until 1981 we give the Administrator—to wit, the IRS—the power to determine whether he should get the benefit of that kind of service when he does qualify to be a beneficiary under the plan. This amendment does not affect that question, but what the amendment of the Senator from Nebraska (Mr. Curtis) does, as we understand it—and Senator Curtis will correct me if I am wrong—is to say that when we set a year we give him a year. Therefore, the 5 months is not enough but he must have 1 year of service even if he aggregates that year in more than 1 calendar year before he attains the age of 30, so that he would have not only to be 30 years of age, but actually to have served in his job for an actual year or a 12-month period rather than 5 months as we have specified under the bill.

In my judgment, as that makes the requirements for qualifications more stringent than the bill now proposes—as I say, it is not an Earth-shaking proposition—I would feel constrained to oppose the amendment.

Mr. Hartke. Mr. President, will the Senator from New Jersey yield me 3 minutes?

Mr. WILLIAMS. Mr. President, how much time is there, by the way?

The PRESIDING OFFICER. Twenty-four minutes.

Mr. WILLIAMS. I yield 3 minutes to the Senator from Indiana.

The PRESIDING OFFICER. The Senator from Indiana is recognized for 3 minutes.

Mr. HARTKE. Mr. President, the Senator from New York correctly states the proposition before the Senate. This is a weakening amendment. In effect, what the Senator from Nebraska would do would be to say to a person who worked for 11 months in a year that he would not qualify. That would delay the vesting time and affect the whole procedure. The net result of this amendment would be to go ahead and weaken what I consider already to be a mediocre, weakening provision on coverage and vesting. Although it is not directed toward vesting, the effect of that would be to delay the time when it could be considered, so that the net result would be to go ahead and take away from an individual who had worked 5 months or more in a year the coverage for him and also would effectively delay the time when vesting could begin.

So I would think that if we want to weaken the bill, vote for the Curtis amendment; but if we want to keep the bill in its present weakened condition, we should oppose the amendment.

Mr. WILLIAMS. Mr. President, I am impressed with the argument of the Senator from Indiana (Mr. Hartke). I believe the amendment would be retrogressive in a sense. Even now, under the Internal Revenue Code, in the provisions that deal with nondiscrimination, the 5-month period is the period designated for purposes of eligibility under a pension plan. So I am inclined to be opposed to the amendment, too.

We are checking out to see whether I am accurate, whether the present Internal Revenue Code language is similar to the language of the bill. Even if the present code is not, as I believe it is, I would oppose the amendment, because I do not believe that we should make it harder for eligibility for coverage.

Mr. CURTIS. Mr. President, I yield myself such time as I may use.

The question here is, How long must an employee serve in order to be eligible to participate in a retirement plan?

The Finance Committee decided on 1 year. As a matter of fact, the administration's proposal called for 3 years because we are dealing with minimum requirements. The parties can enter into an agreement for everyone the first day, if they want to. But we are laying down the minimum requirements and the decision arrived at by the Finance Committee was 1 year.

Now, in another section, or elsewhere in the bill, a year is defined as 5 months. The definition of 5 months constituting a year may have been discussed in the Finance Committee. I do not think it was discussed at any time when the junior Senator from Nebraska was present.

Most of the employees will serve a full year. In explaining this bill up to now, we all have been informed that one must be 30 years of age and have served a year. By definition, we find that a year is not a year, but is 5 months.

Upon reflection, I believe that we should adopt this amendment, because many people do not think the 5-month rule is wise—I do not think the unions think it wise—because it is my understanding that that is the reason why the unions asked that it be handled by regulation until 1981.

I do not think that someone who serves 5 months should lose that time if another calendar year goes by. Therefore, my amendment provides that a year's service shall be calculated from the beginning of the employment, in the aggregate, so that after the employee has worked 5 months, and then has worked 7 months more, he has worked a year. I believe this is the commonsense rule.

It is my understanding that a commitment has been made that there will be no rollcall votes today. Therefore, Mr. President, I ask unanimous consent to withdraw the amendment, without prejudice to offering it tomorrow.

Mr. Robert C. Byrd. Mr. President, reserving the right to object—I shall not object—would the distinguished Senator agree to setting a time on tomorrow morning for a vote on his amendment, with the understanding that there would be, say, 20 minutes, equally divided, before the vote, so that another explanation of the amendment could occur at that time?

Mr. Curtis. It is a very brief amendment. I do not think we would take 20 minutes to present it. Since they have raised some question about it, I would prefer to withdraw it at this time. I understand that I do not need unanimous consent to do that, but I want to do it with the understanding that it is without prejudice to offering it tomorrow.

Mr. Robert C. Byrd. It is my understanding that the Senator would not want to agree to a time limitation at this time.

Mr. Curtis. I would prefer to withdraw it, with the understanding that no objection would be raised if I chose to offer it tomorrow.

Mr. Robert C. Byrd. I thank the Senator.

Mr. Curtis. I yield back the remainder of my time.

The Presiding Officer. The amendment is withdrawn. Who yields time?

Mr. Nelson. Mr. President, I suggest the absence of a quorum.

The Presiding Officer. On whose time?

Mr. Nelson. I ask unanimous consent that the time not be charged to either side.

The Presiding Officer. Without objection, it is so ordered.

The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. Curtis. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The Presiding Officer. (Mr. Helms). Without objection, it is so ordered.

Mr. Curtis. Mr. President, I yield 10 minutes to the distinguished Senator from New York on the bill.

The Presiding Officer. The Senator from New York is recognized.

Mr. Buckley. Mr. President, I wish to make a few comments on the pending legislation. I send to the desk an amendment. I do not intend

to call up the amendment until tomorrow, but I do wish to have it printed in the Record.

The Presiding Officer. The amendment will be received and printed, and will lie on the table; and, without objection, the amendment will be printed in the Record.

(The text of amendment No. 504 appears on p. 1674.)

Mr. Buckley. Mr. President, I would like to express concern over an institutional problem illustrated by the history of this most important legislation. I believe that most Senators agree that the time has long since come to establish minimum protection for those who have labored for years with the understanding that on retirement, they will actually receive the pensions agreed upon under their contracts of employment.

This is a complex matter and the legislation will affect innumerable millions of our citizens. It is a bill that requires careful thought. Two committees have reported legislation covering the same field: One, of course, was the Committee on Labor and Public Welfare, and more recently the Committee on Finance.

The report of the Committee on Finance became available on August 22, 1973, when we were on our summer recess. We were not able to determine its contents until after our return 2 weeks ago. Many of us have received inquiries from constituents concerned over certain features in the Finance Committee bill. Many of us have spent long hours trying to make its complexities, and then, the latter part of last week the Committee on Finance rewrote a significant portion of this legislation and the new version did not become available to us until just hours ago. Yet we are operating under a time limitation agreement allowing 6 hours on the bill.

I am concerned over certain inequities that appear in this legislation. We seem to be arranging for three or four categories of individuals, depending upon whether they work for large firms or small firms, whether they work for incorporated professional groups, or whether they are individuals not currently covered by any form of pension.

In one instance, 15 percent of earnings may be set aside, without any ceiling. In another instance there is a provision for a top limit of $75,000 a year. In still another instance we have a top limit of $7,500 a year. In yet another category, there are those not otherwise covered by a pension plan, who would be allowed to set aside up to $1,000 per annum. In other words, we are allowing our citizens different tax benefits even though the tax burden, in terms of the postponement of taxation on current earnings, must be shared by all.

It had been my intention to offer an amendment that would seek to achieve parity of treatment for all Americans in their ability to set aside a portion of their earnings tax free against their retirement years.

I was advised, however, that because of the complexities of the Internal Revenue Code it would be impossible to draft an amendment to achieve this result in less than 2 or 3 weeks' time.

I would hope that in the future when we are dealing with legislation of such complexity and such importance, the leadership would see to it that after the last committee proposal has been issued, adequate time would be allowed before debate for the legislation and report to be studied, not only by Members of the Senate, but also by the public.

I hope we would be allowed 2, 3, or even 4 weeks to study and analyze this legislation in order to be able to understand it, to draft amendments, and to circulate those amendments in sufficient advance time for them to be evaluated by our colleagues.

The amendment I have sent to the desk and which I intend to call up tomorrow would seek to alleviate the unequal treatment accorded those who under the present proposal are entitled to set aside only $1,000 a year. I propose to raise that upper limit to $7,500 in order to at least give these individuals the same ability to provide for their own future that is allowed employees of so-called proprietary corporations.

Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. BUCKLEY. Mr. President, I suggest the absence of a quorum and ask unanimous consent that it not be charged to either side.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. PASTORE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Who yields time?

Mr. THURMOND. Mr. President, I send to the desk two amendments, the cosponsors of which are Senators Eastland, Helms, Goldwater, Bartlett, Tower, Fannin, Brock, Hollings, Bellmon, Cook, Buckley, Dole, and Gravel and ask unanimous consent that the amendments be considered en bloc.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the amendments.

The assistant legislative clerk read as follows:

On page 35, line 6, strike out "72(n)".

On page 35, line 7, strike out "101(b)(3),".

On page 41, lines 11–12, strike out "or a proprietary employee (within the meaning of section 412(b)(1))".

On page 72, lines 9–10, strike out "or a proprietary employee within the meaning of section 412(c)(1) of such Code".

On page 83, lines 21–22, strike out "or a proprietary employee within the meaning of section 412(c)(1)".

On page 87, lines 3–4, strike out "or a proprietary employee within the meaning of section 412(c)(1)".

The PRESIDING OFFICER. The Chair inquires whether these amendments are the amendments on which the Senator has 2 hours.

Mr. THURMOND. Mr. President, 2 hours have been allotted to me for an amendment. This portion of my amendment is separate. I ask unanimous consent that I may reserve the remainder of my time in case I offer any other amendment.

The PRESIDING OFFICER. Is there objection to the request of the Senator from South Carolina. The Chair hears none, and it is so ordered.

Mr. THURMOND. Mr. President, I have conferred with the managers of the bill concerning these amendments. I simply want to say first of all that the first amendment bestows equal tax treatment in lump-sum distributions and the $5,000 death benefits.

The second amendment would permit the proprietary employees to have the same access to the central portability fund that the employees of large corporations have.

Mr. President, I think that more or less explains what the amendments are.

I have conferred with the managers of the bill, and I will be pleased to hear from them at this time.

Mr. NELSON. Mr. President, we have examined the amendments offered by the distinguished senior Senator from South Carolina. They provide, among other things, that the portability provision is to be available for the proprietary employees.

Since this provision provides that the portability provision is to be available to regular corporate employees, there is some logic for not extending the portability provision to proprietary employees.

The second provision is that providing for 15-year averaging for lump-sum distributions. This is extended to proprietary employees. We do not object to that. The third provision under the Senator's proposal extends the $5,000 death benefit provision to proprietary employees. I see no objection to making their status the same as the status of regular corporate employees.

So, we are prepared to accept the amendments offered by the senior Senator from South Carolina.

Mr. THURMOND. Mr. President, I thank the Senator from Wisconsin for agreeing to accept the amendments.

Mr. GRAVEL. Mr. President, I am in favor of the amendment offered by the senior Senator from South Carolina to delete from the pension bill the provisions applying to proprietary corporations.

My tax philosophy is equal treatment for all individuals. I do not support, and will work to remove, many of the loopholes in our current tax laws that allow the rich to reduce their effective tax rate. Furthermore, I support, as I am sure most of my colleagues do, our progressive rate structure. If the loopholes are closed, this progressive rate structure will allow us to tax individuals equitably.

I believe that closing the loopholes is the only fair way to make taxes more equitable. If Congress wants to make the tax system more equitable, it should close them rather than imposing other unfair restrictions on individuals, particularly with regard to pension benefits.

An individual should be taxed on income at the time at which he uses such income for personal benefit. I strongly support pension programs, and believe that an individual should be able to put money aside for retirement and pay taxes on it when he draws it out during retirement. This is not tax avoidance, but tax equity.

In considering tax legislation, we must remember that we can only effectively tax individuals. We do not really tax businesses as this tax is passed on to the consumer. Therefore, whether the tax is imposed on an individual per se, a small business, a corporation, or a proprietary corporation—a new "person" established by this bill, we must insure that there is equal treatment for the individual. In the case of pension plans, I believe that equal treatment means insuring that all individuals have an opportunity to provide for a retirement benefit

equal to their income at the time of retirement, and not pay taxes on that money until it is drawn out at the time of retirement. The tax equity is still present as the money is taxed at the regular progressive rate when it is withdrawn.

S. 1179 would provide discriminatory treatment for the retirement plans of small business and would furthermore act as a serious deterrent to the growth of our private retirement system. I cannot support such treatment. I hope that my colleagues will support this amendment so that on final passage they will not be forced to choose between providing adequate standards such as vesting, funding, and portability, and providing an equitable tax structure.

The goal of S. 1179 is commendable. All of us deplore the loss of benefits that had been promised to an employee. These benefits must be protected and S. 1179, by providing minimum standards for vesting and funding, by providing for termination insurance, by providing for a system of voluntary portability, will insure that pension benefits will be available to all employees that have a pension plan. We must be careful, however, to insure that we do not provide a disincentive to starting pension programs, for standards are meaningless to those that are not covered by one.

S. 1179 creates a new person, known as a proprietary employee. He is the owner or part owner of a small corporation. Based solely upon this legal status—ownership and corporate size—his retirement benefits must therefore be less than those of a large, publicly owned corporation.

The reduction of these tax benefits is inconsistent with the goal of S. 1179—providing for a superior private retirement system. S. 1179 provides for many restrictions to be placed upon retirement plans of small companies—restrictions not applicable to corporate giants. Some of these restrictions are:

First. S. 1179 will permit an employee who switches employers to transfer any vested retirement benefits he may have in his first employee's retirement plan, either to his second employee's retirement plan or to a special portability fund which is to be created under the terms of the bill—the transfer would be tax free and these funds would not be taxed to the employee until retirement. As a result, a corporate executive will be able to switch from his present job to a better position without having his retirement benefits prematurely taxed.

This provision will not, however, be available to proprietary employees. As a result, even though the proprietary employee may transfer his retirement fund to a new employer and, therefore, not derive any personal benefit from these moneys, he will be currently taxed, thereby reducing the proprietary employee's ability to better himself if an opportunity arises.

Second. Under the present law, which is not changed by S. 1179, a distribution of up to $5,000 paid to a specific beneficiary by reason of the death of an employee may be excluded from income. S. 1179 would knock out the $5,000 death benefit exclusion for beneficiaries of proprietary employees, hitting at the foundation of the private pension system.

Third. S. 1179 provides for a new tax computation for lump-sum distributions from qualified retirement programs. Thus, distributions attributable to years after 1973 will be ordinary income subject to a 15-year averaging computation. The committee provision recognizes the fact that this distribution represents compensation which generally is received spread out over the taxpayer's life beginning with the time he retires. This commendable and logical approach, however, is not available to proprietary employees. Instead, this distribution will be taxed based upon a 5-year averaging formula.

Since when is life expectancy a function of corporate ownership?

Mr. President, these limitations which do not apply to all corporations are inappropriate. They represent discrimination against the small business of our country and as such they should be eliminated from S. 1179.

Mr. JAVITS. Mr. President, we have examined the amendments of the senior Senator from South Carolina. As far as I am concerned, like the Senator from Wisconsin, we are willing to accept the amendments.

Mr. CURTIS. Mr. President, I have no objection to the amendments.

Mr. NELSON. Mr. President, I yield back the remainder of my time.

Mr. THURMOND. Mr. President, I reserve the remainder of my time that has been allotted to me under the previous agreement.

The PRESIDING OFFICER. The question is on agreeing to the amendments en bloc.

Mr. JAVITS. Mr. President, may we understand what the Senator means by his statement that he reserves the remainder of the time allotted to him?

The PRESIDING OFFICER. The Senator had 2 hours under the prior unanimous consent agreement, and he wants to reserve it.

Mr. JAVITS. Mr. President, is not a unanimous consent agreement required for that in view of the fact that he has been allotted time?

The PRESIDING OFFICER. It has already been granted.

The question is on agreeing en bloc to the amendments of the Senator from South Carolina.

The amendments were agreed to.

AMENDMENTS NOS. 505 AND 506

Mr. NELSON. Mr. President, I send to the desk two amendments which I will very briefly explain in a moment.

The PRESIDING OFFICER. The amendments will be received and printed and will lie on the table.

Mr. NELSON. I shall offer these amendments as amendments to S. 4 as amended by No. 497, which contained only provisions that came out of the Finance Committee. They involve a provision in the Finance Committee measure with which I do not agree.

The first amendment which I will call up tomorrow would establish a limitation of $45,000 as a maximum amount that may be paid in annual pensions through the use of tax deductible contributions to the pension fund. In other words, I will be offering an amendment to the Finance Committee proposal which provided that the maximum pension that may be paid shall be 75 percent of the average annual income

over the highest 3 years of income received by the beneficiary with the calculation of 75 percent to be against a maximum based on $100,000.

The Finance Committee's proposal provides that one may receive a maximum pension of $75,000 a year. The Senate Finance Committee's proposal is based on a formula which provides that one can receive 75 percent of his average compensation of his highest 3 years, regarding any salary in excess of $100,000.

My amendment would simply reduce that maximum amount of compensation from $100,000 to $60,000, allowing therefore a maximum pension, paid for by tax deductible dollars, of $45,000 a year.

The amendment would apply the $45,000 limitation to all corporations, the large ones, the small ones, proprietary corporations, closely held corporations—all of them would be held to the same limit.

I am making this proposal because I think there ought to be some reasonable limit to the amount of money that can be contributed to pension plans with tax deductible dollars for purposes of providing annual pensions for individuals. There is no particular magic in the amount that I have selected, but I find it hard to defend excessive amounts of tax-deducted pension benefit for high paid corporate executives. Some corporations are setting aside tax deductible dollars to pay for pensions amounting to $100,000, or $150,000, a year. Those pensions are being paid for, in part, by low-paid and middle-income employees in this country who do not receive any pension at all. The cost of the pension plans now in effect, for the tax deductible features in those pensions, is now $4 billion a year.

If General Motors, ITT, or any other large corporation wishes to pay more than $45,000 a year to its employees, then I think they ought to make that contribution out of taxable income.

I might point out that this amendment is the same as the Finance Committee amendment in respect to the tax, in that it provides a limitation on the amount of the pension that can be paid annually, not the contribution to the pension. That is to say, if a new pension plan is created and the senior corporate executive is 55 years of age, adequate contributions may be made into that plan so that by the time he is 65 years of age he can have a pension of $45,000 a year; if he has contributed enough into the pension plan. Of course, the same formula applies to those in income brackets below the $60,000. They also are entitled to a pension of 75 percent of the highest 3 years of their earnings.

The PRESIDING OFFICER. The amendments will be received and printed, and will lie on the table.

Mr. NELSON. Mr. President, I ask unanimous consent that the amendment (No. 505) which I have just discussed be the pending business at 10 o'clock tomorrow morning.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Wisconsin? Without objection, it is so ordered.

Mr. NELSON. Mr. President, if the first amendment which I have just discussed, which will be called up at 10 o'clock in the morning, should fail, then I ask unanimous consent that immediately following my first amendment a second amendment (No. 506) be taken up at 11 o'clock tomorrow, with, of course, the 1 hour limitation; my second

amendment would establish the $75,000-a-year limitation, as a limitation upon large corporations as well as a limitation on the closely held and proprietary corporations, as is now provided for in the Finance Committee amendment No. 497.

The Presiding Officer. Is there objection?

Mr. Javits. Mr. President, reserving the right to object, I believe the unanimous-consent agreement should accommodate amendments to the amendment, and instead of being conditioned upon a time should be conditioned upon an event.

In short, I have no objection if the Senator asks unanimous consent that the first order of business tomorrow be his amendment, that is, the $45,000 amendment, but when that is disposed of, together with all amendments thereto, the next order of business should be his $75,000 amendment; because I think if he fixes his time, he might be cut off.

Mr. Nelson. The Senator is absolutely correct. I would amend that to request that immediately following the disposal of my first amendment, whatever the time may be, my second amendment would become the pending business.

Mr. Javits. Still reserving the right to object, Mr. President, I think the attention of other Senators with amendments ought to be called to the fact that they would then have to wait their turn, which might be as late as noon. That is entirely agreeable to me, but I think other Senators ought to be alerted.

Mr. Thurmond. Mr. President, reserving the right to object, and I shall not object, if we can have it understood that my amendment on this same subject will follow the amendment of the distinguished Senator from Wisconsin, after the vote on his second amendment, whether his second amendment fails or passes.

There is a possibility that if his second amendment passes I shall withdraw my amendment, but I do not wish to commit myself at this time.

Mr. President, I ask unanimous consent to amend the request of the Senator from Wisconsin to that effect, that my amendment follow the vote on his second amendment. Will the Senator accept that?

Mr. Nelson. I agree.

The Presiding Officer. Is there objection?

Mr. Robert C. Byrd. Mr. President, reserving the right to object, and I shall not object, what is the multiple request?

The Presiding Officer (Mr. Bartlett). That at 10 a.m. the Nelson amendment be made the pending amendment. If it fails, the second Nelson amendment will then be made pending, and following the consideration of one or both Nelson amendments, the Thurmond amendment would be made pending.

Mr. Robert C. Byrd. If called up by Mr. Thurmond.

The Presiding Officer. That is correct.

Is there objection? Without objection, it is so ordered.

Mr. Javits. Mr. President, I again ask unanimous consent that we may have a quorum call without the time being charged to either side.

The Presiding Officer. Without objection, it is so ordered.

Mr. Javits. I suggest the absence of a quorum.

The Presiding Officer. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. Nelson. Mr. President, will the Senator withhold that?

The Presiding Officer. A quorum call is in progress.

Mr. Javits. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The Presiding Officer. Without objection, it is so ordered.

Mr. Nelson. Mr. President, so that these brief amendments, each with a brief explanation, may follow my extemporaneous remarks, I send to the desk the two amendments that I have discussed. I ask unanimous consent that the amendments be printed in the Record, and that a brief explanatory statement attached to each of them be printed in the Record, along with a more extensive statement on this issue.

There being no objection, the amendments were ordered printed in the Record.

(The texts of amendments Nos. 505–506 appear on pp. 1675–1677.)

Mr. Nelson. Mr. President, the amendment that I will be offering tomorrow would place a limit on the amount of tax deductible contribution that a corporation can make for high paid executives. Briefly, this amendment will limit the maximum possible pension benefit to $45,000 a year.

There are times when I suspect that our tax laws are deliberately written to be incomprehensible to the average taxpayer. If they were clearly written, it would be obvious to all that almost every page contains an assault on common sense. No elected representative could successfully defend the proposition that in order to provide some retirement benefit for low income workers it is necessary to provide an unlimited amount of deferred compensation to highly paid executives. As indefensible as this proposition may be, it is in fact embodied in our existing tax law for pensions. For example, if a president of a large corporation earns $250,000, and the company provides a pension equal to 70 percent of pay, it can pay its president $175,000 a year from its qualified plan.

A random selection from the 1972 Securities Exchange Commission's files shows that this example is not just a theoretical possibility, but an actual abuse. Tax-free deductions are being made for some corporate executives which will allow them to enjoy an estimated pension benefit of more than $100,000 each year. The average pension benefit for the individuals shown is $61,000 a year.

So that we may see some of the pension benefits provided for some highly compensated employees in corporate pension plans, I ask unanimous consent to insert in the Congressional Record at this time a random selection from the 1972 SEC's files. I do not suggest that the recipients of higher pensions are not worth that amount to their respective corporations. I simply suggest that these large pensions should not be funded by a tax deductible income. There should be a reasonable maximum set on the amount of tax deductible dollars that may be used in funding pensions.

There being no objection, the table was ordered to be printed in the Record, as follows:

SOME COMPARABLE FIGURES FOR HIGHLY COMPENSATED EMPLOYEES IN CORPORATE PENSION PLANS

Corporation and name of officer	Annual compensation	Estimated annual retirement plan benefits	Benefit as percent of compensation
Columbia Broadcasting Corp.:			
Clive J. Davis	$122,885	$59,073	48
Harvey L. Schein	57,500	42,277	74
Dow Chemical Co.:			
Donald K. Ballman	190,120	88,000	46
C. B. Branch	322,247	157,400	49
Carl A. Gerstacker	184,698	94,800	51
Singer Co.:			
Lloyd L. Kelly	106,667	48,908	46
Donald G. Robbins, Jr	99,792	55,249	55
RCA:			
Anthony L. Conrad	154,167	119,687	77
Charles M. Odorizzi	70,000	44,093	63
Robert L. Werner	132,500	65,345	49
TWA: C. P. Meyer, Jr	67,800	32,434	48
Tenneco, Inc.: W. E. Scott	173,150	64,135	37
Union Electric Co.:			
Charles J. Dougherty	145,000	66,087	46
W. E. Cornelius	86,250	45,516	53
Loews Corp.: Lester Pollack	70,055	42,952	61
Western Bancorporation: Sherman Hazeltine	88,700	50,724	57
IBM:			
Arthur K. Watson	113,904	50,000	44
Albert L. Williams	100,000	41,250	41
Raytheon Co.: Thomas L. Phillips	231,131	101,391	44
Bell & Howell: Everett F. Wagnor	115,000	45,000	39
Allied Stores Corp.: Theodore Schlesinger	100,000	35,000	35
Abbot Laboratories:			
Charles S. Brown	82,431	36,048	44
George R. Cain	162,404	76,944	47
Edward J. Ledder	146,070	61,068	42
ABC:			
Everett H. Elerick	157,200	41,699	27
Simon B. Siegel	49,948	33,100	66
Average		61,000	50

Source: From SEC filings selected at random.

Mr. Nelson. Mr. President, it is absurd to maintain that only by allowing highly paid corporate executives such lavish annual pensions will large corporations be willing to establish plans covering most of their workers. I believe that even the highest paid corporate executive would find some value in a much more modest annual pension.

It is hard to see, particularly in light of severe restraints imposed on Federal expenditures generally how we can justify a tax expenditure to help finance a pension of more than $100,000 a year to one individual, particularly one who should be well able to provide for his own retirement. It is this kind of tax preference that makes proposals to raise taxes on the average American taxpayers particularly outrageous. How can anyone possibly contemplate raising taxes without first reforming some of the most egregious loopholes which favor the rich and penalize the poor.

The present tax treatment of pensions results in an annual loss of revenues to the Treasury of $4 billion. While taxpayers generally bear the revenue loss, less than half of the work force—and a lesser fraction of the total population—receive the benefit. These taxpayers must pay increased taxes for the tax reductions granted to others. According to latest estimates only 42 percent of the private nonfarm work force are presently covered by pension plans.

Mr. President, I ask unanimous consent that a table showing the estimated number and proportion of employees currently covered by pension plans be inserted in the Congressional Record at this time.

There being no objection, the table was ordered to be printed in the Record, as follows:

TABLE I.—ESTIMATED NUMBER AND PROPORTION OF EMPLOYEES CURRENTLY COVERED BY PENSION PLANS

[In millions of employees]

	Total nonfarm	Private nonfarm [1]	Federal [2]	State and local [2]
Employees	75.5	61.9	2.6	11.0
Covered by pension or profit-sharing plan	36.5	26.0	2.3	8.2
Percentage covered	48.0	42.0	95.0	75.0

[1] Excludes self-employed.
[2] Coverage estimated on the basis of the proportion covered in 1969. In that year, the latest for which actual data is available, there were 3,000,000 Federal workers of whom 2,800,000 or 95 percent were covered and 9,500,000 State and local employees of which 7,200,000 or 75 percent were covered.

Mr. NELSON. Mr. President, ironically, it is likely to be the low income workers who are not covered by pension plans and whose taxes consequently must be increased to pay for the generous tax treatment afforded higher paid workers covered under pension plans. An analysis of who is and who is not covered prepared by the Bureau of Labor Statistics in 1968 leads to this obvious conclusion: the uncovered one-half is heavily drawn from employees of small companies who tend to be at the lower end of the wage scale. For example, the survey shows that for companies where the average earnings of all employees in the company is less than $5,000, the percentage of workers covered is 30 percent, while if the average earnings are over $10,000, the percentage rises to 78 percent.

It was these obvious inequities that induced the Senate Finance Committee to place certain limitations on some corporate plans. These limitations based on a formula involving amount of ownership and amount of benefits derived from the pension would have ended both the present stampede by many members of the medical and legal professions to incorporate to enjoy the substantial benefits provided under a corporate pension plan and the present tax discrimination against lawyers and doctors providing the same professional service without incorporating.

While the original Senate Finance Committee proposal was less than ideal and needed to be reworked, the committee's second decision is a total abandonment of any meaningful attempt to limit the amount of pension benefits enjoyed by wealthy individuals. It allows, for example, a possible maximum pension of $75,000 a year funded by tax deductible dollars. I fail to see what defensible principle is being established by such a ludicrously high ceiling.

An argument against the committee's original proposal was that it discriminated against small corporations as contrasted to larger corporations. This was, of course, true because it was impossible for owners-employers of large corporations with a substantial number of workers to enjoy 25 percent of the benefits derived from the pension plan. I

have always felt that there should be an across-the-board limitation on corporate plans and, therefore, propose to end this subtle discrimination against small corporations by applying my amendment to all corporate plans. I do not consider this amendment to be the first step to tax reform, but rather the first step to sanity.

My amendment provides that a plan shall not exceed 75 percent of the average of the employee's highest 3 years of compensation, disregarding average compensation in excess of $60,000. Hence, the maximum pension benefit permitted any employee would be $45,000. This maximum benefit is to be funded over a period of not less than 10 years. In the case of a profit-sharing or money-purchase plan, the amount contributed on behalf of any employee would be subject to limitations corresponding in substance to the limitations on contributions on behalf of any employees under a stated benefit plan.

In considering placing some limitation on the pension benefits, one should remember the extraordinary series of tax preferences already granted deferred compensation plans which represent a substantial departure from the general rules of taxation and which are of greatest benefit to high-income taxpayers.

Generally, compensation paid to employees is deductible only if the employee would include the payment of the income at approximately the same time.

The one exception to this rule is for pension and profit-sharing plans that "qualify" under section 401 of the Internal Revenue Code. Contributions to such plans are deductible while taxation to the employee is delayed until actual distributions from the plan, most often after retirement.

Deferral of taxation until after retirement can, of course, have the effect of reducing the tax which will have to be paid in those cases where the worker will be in a lower tax bracket in his post-retirement years.

In essense, the deferral of tax amounts to an interest-free loan from the Treasury to the employee.

It is clear that for each dollar of retirement benefits purchased, the higher the tax bracket the greater the "loan." For example, assume at a given age it will take a set-aside of $1,000 per year, each year until retirement, to finance a life annuity of $5,000. If the employee is in the 25 percent bracket, the Treasury's interest-free loan is $250 per year; for the employee in the 50 percent bracket, the loan is twice as much, or $500 per year.

Moreover, it is not "discriminatory" in favor of higher paid employees to provide a larger pension for such employees than for the lower paid as long as the ratio of pension to pay is the same. Thus, a plan providing all employees with a pension of 50 percent of pay would qualify for the special tax treatment, increasing the tax advantage to higher paid employees. A principal tax advantage of private plans is that once contributions are made to it the earnings on these invested funds are not taxed. It is this more than anything else that has caused the assets of pension funds to increase by about $12 billion each year.

Further tax advantages granted deferred compensation plans are:

FIRST. APPRECIATION VALUE OF EMPLOYER'S STOCK NOT TAXED

In certain cases, an employee or his beneficiary may receive a distribution from a trust which includes securities of the employer. In such distribution, unrealized appreciation in the value of the securities of the employer is not included in the employee's income at that time. This means that an executive whose profit-sharing plan consists of his own firm's stock may not pay tax on the full appreciation in value until he sells the stock.

SECOND. NO ESTATE TAX ON DEATH BENEFITS

Death benefits paid by employees' plans generally take the form of an annuity or a lump-sum payment. Ordinarily, the value of such an annuity or payment would be included in the employee's gross estate for Federal estate tax purposes. But, under a qualified plan, that part of a death benefit which is attributable to employer contributions is excluded from the gross estate and, thus, is not subject to estate tax.

THIRD. CAPITAL GAINS TREATMENT OF LUMP-SUM DISTRIBUTIONS

Although pensions are considered to be a form of compensation, pensions received in the form of lump-sum distributions were taxed, until 1969, as capital gains. The Finance Committee changed this to give capital gains treatment to all appreciation received up to the end of 1973, and thereafter, any gain would be taxed as ordinary income, but modified by a 15-year averaging calculation. Once again, pension benefits are taxed at a lower rate than salaries or wages.

These and other tax preferences are justified because the private pension system as a whole supposedly provides for the retirement income of a substantial number of low income workers.

In practice, however, this is not always true. A corporation can have a qualified pension plan regardless of how few persons besides the owner it employs.

Lack of wide coverage is particularly true of professional corporations. In just the 4-year period of 1968 to 1971, the number of corporate tax returns filed by physicians and surgeons increased from 1,600 to 20,000, while the number of such tax returns filed by legal service firms rose from 158 to over 3,000. One-man professional corporations are common.

Furthermore, while a pension plan cannot discriminate in favor of high paid employees and benefits as a percentage of compensation must be the same for all covered employees, there are many ways to reduce the effectiveness of these requirements. One means by which the lower paid receive relatively less benefits from a qualified plan is the practice of intergrating such plans with social security. In general, this permits the employer to treat a portion of social security benefits as part of his plan and to reduce the benefits he pays accordingly.

For example, the benefit formula may be 50 percent of pay reduced by 83 percent of the primary social security benefits. For low-income people this will mean little or no benefit from the private plan. For

high-income individuals, the social security offset will have relatively little effect.

Allowing employers to count their social security contributions as part of their pension contributions strikes at the very heart and justification for pension plans. Integration clearly encourages discrimination in favor of highly paid employees which is supposedly not allowed. This is recognized by authorities in this area. For example, a 1971 Commerce Clearing House publication entitled "Professional Corporations Handbook" states:

> A professional corporation can increase the percentage of contributions to a qualified plan distributed for the benefit of highly paid employees (shareholders, etc.) by integrating the plan with Social Security benefits . . . Thus, a professional corporation pension plan may integrate its private plan with the Social Security retirement plan by providing that all employees below a salary level covered by Social Security are to be excluded from the plan.

Pension benefits given to low-paid employees as an abstraction are taken away in the fine print of the income tax code.

Two years ago, the situation was even worse. Before 1971, even a worker who had retired could have his pension reduced by increases in the social security. I do not think, however, that most Members of Congress will be relieved that social security increases will now only cause reductions in future pensions. I fail to see the justification for such a result. Congress improves social security to reduce poverty among the elderly, not to reduce a worker's promised pension. Little is known about the full implication of integration, but in a May 27 Los Angeles Times article by Ronald Soble, it was estimated that perhaps as many as 2 or 3 million Americans' private pension benefits are offset by increases in social security benefits, and that as many as 20 million other workers work for companies that use social security as a basis for calculating private pension plans.

Also, pension plans may qualify even though coverage is limited to employees who are within a prescribed age group, have been employed for a stated number of years, have been employed in certain designated departments, or are in other classifications.

Some of these ways of excluding low-paid employees will be limited to some extent by the pension bill being debated today, but other methods remain completely untouched. For example, a plan for salaried employees only will qualify for favorable tax treatment and be found not to discriminate in favor of highly compensated employees even though a majority of the company's low-paid employees are excluded from the plan. In one salaried-only plan where 11 out of 26 participants were either officers, shareholders, supervisors or highly compensated employees, and the compensation of the remaining 15 participants was substantially the same as that of the 85 excluded hourly employees, the nondiscriminatory coverage requirements was satisfied regardless of whether the excluded employees were covered under a similar or comparable plan.

In this plan, only 23.9 percent of all employees were covered; but 42.3 percent of the covered employees were highly compensated.

These are just some of the methods used to exclude low-paid employees.

In the pension area, we find a consistent pattern of real tax advantage for the wealthy but illusionary pension benefits for the average

worker. The bill before us does a great deal to make pensions real for the American worker, but it does little to end tax favors for the wealthy. The present tax treatment of the deferred compensation of corporate executive is an abuse that cannot be defended. I urge Senate adoption of my amendment placing a ceiling on excessive benefits enjoyed by few and paid by many.

Mr. HARTKE. Mr. President, will the Senator yield 30 seconds to me?

The PRESIDING OFFICER. The Senator from Indiana is recognized.

Mr. HARTKE. Mr. President, the amendments offered by the Senator from Wisconsin are improvements to the bill. I would hope that, during the night, Senators will have the opportunity to review the amendments and will be able to understand what the Senator from Wisconsin is attempting to do, which is to provide some kind of equity to what at this moment is an unfair pension system in this country.

I want to congratulate the Senator and tell him that I intend to support his amendments.

Mr. NELSON. I thank the Senator from Indiana very much. I am in agreement with him, in that there are a number of inequities in the present pension law and inequities in the current law, in the sense that we do not correct some matters that should be corrected. The limitation that I will be proposing at least is one step in the right direction in terms of putting more equity into this proposal.

Mr. HARTKE. What the Senator is directing his attention to are certain types of advantages which go to individuals under present law and under the proposed law, so that tax advantages would prevent a pension from having full utilization of funds from accruing to an individual. We are not doing anything to destroy the opportunity for pension rights here. The only difference is whether the country at large will pay for it or whether the producing individual or the producing corporation will pay for it.

Mr. NELSON. That is correct. A corporation can establish any pension system it finds desirable as long as its plan is nondiscriminatory. The purpose of this is to set some real limitation on the amount of any contributions on tax-deductible money.

Mr. HARTKE. Some people might say that the whole tax program for pensions would become a tax loophole and Congress will be putting its stamp of approval on a big tax loophole. But that is neither here nor there.

Mr. JAVITS. Mr. President, I suggest the absence of a quorum and ask unanimous consent that the time be charged to neither side.

The PRESIDING OFFICER (Mr. Stevenson). Without objection, it is so ordered, and the clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. NELSON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. NELSON. Mr. President, I ask for the yeas and nays on my amendment, which will be the pending business at 10 o'clock tomorrow morning.

The PRESIDING OFFICER. Unanimous consent is necessary for it to be in order to ask for the yeas and nays.

Mr. NELSON. I ask unanimous consent that it be in order.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. Nelson. I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. Nelson. Mr. President, I ask unanimous consent to have printed in the Record an analysis of the substitute amendment to S. 4, my amendment No. 496.

There being no objection, the analysis was ordered to be printed in the Record, as follows:

Analysis of Amendment No. 496

1. Administration

Several parts of the amendment are to be administered by the Internal Revenue Service. In this respect, the amendment follows the provisions of S. 1179, by creating within the Internal Revenue Service a new office, to be known as the Office of Employee Plans and Exempt Organizations. This office would have the responsibility within the Service for enforcing the tax law requirements with respect to pension plans and also charitable foundations and other tax-exempt organizations.

This new office in the Internal Revenue Service will improve the administration of the tax laws on pensions by putting all of the pension specialists under a single roof. This new office, headed by an Assistant Commissioner of Internal Revenue, will decide questions concerning whether the plan is qualified, the deductibility of contributions to the plan, the taxation of annuities, the minimum funding standards, and the new rules on prohibited transactions, and will see to it that these provisions are enforced.

To finance the cost of administration of qualified employee retirement plans as well as exempt organizations, the amendment would authorize appropriations equal to the collections from a new $1 per participant audit-fee-excise tax, as well as one-half of the collections from the existing 4-percent excise tax on the investment income of private foundations.

To assist employees in actually receiving the plan benefits to which they are entitled when they retire, the amendment requires the plan administrator of any qualified plan or government plan to file an annual statement with the Secretary of the Treasury regarding any individual who leaves his job with a deferred vested retirement benefit. The statement is to include the amount of the individual's vested benefits. This information will be furnished by the plan administrator to the participant and will also be furnished by the Internal Revenue Service to the Social Security Administration.

When an individual applies for Social Security benefits, he will be notified of any information which the Social Security Administration has relating to any of the worker's vested retirement benefits, including the name and address of the person to contact to receive those benefits. This will help ensure that no worker will lose his pension rights through inadvertence, because he has forgotten that he has a right to a pension, or does not know where to write to receive his benefits.

2. Participation and Vesting

The provisions concerning participation and vesting are crucial to the protection of pension rights. Without adequate safeguards in those areas, millions of workers may be denied the right to participate in a pension plan of their employer. Additionally, even where they participate, without vesting safeguards the pension benefits which have been built up over the years can be completely lost if the employee loses or leaves his job before retirement. Both S. 4 and S. 1179 include substantial protection in the areas of vesting and participation, and the amendment combines the best features of both these bills.

Under S. 1179 and the amendment, the employer could not require as a condition of participation a period of service greater than one year or attainment of an age greater than 30 years. (However, neither the amendment nor the bills require plans for owner-employees—so-called H.R. 10 plans—to change their participation and vesting rules, which are: all employees with at least 3 years of service must be participants, and their benefits must be 100 percent vested immediately.) Under this rule, coverage under private pension plans will in-

crease significantly without imposing an undue burden of cost on the employer.

Under present law, where employees in a collective bargaining unit prefer current compensation or other benefits to a pension plan, employers are sometimes unable to establish a plan for other employees because the coverage and antidiscrimination requirements of the tax law cannot be satisfied. This situation can result in hardship where all employees of an employer are forced to forego the benefits of a pension plan merely because those employees who included in a collected bargaining agreement choose nonpension benefits. On the other hand, an employer should not be able to exclude his union employees from a pension plan without compensation for this in the form of other types of benefits.

Therefore S. 1179 and the amendment provide that collective bargaining employees may be excluded for purposes of applying the coverage test of the tax laws where there is evidence that retirement benefits have been the subject of good faith bargaining between the union employees and the employer in the negotiations relating to the most recent contract. However, the mere fact that the union didn't choose pension benefits in one bargaining session would not prevent it from rasing the issue again in connection with a later contract.

With respect to vesting, S. 4 provides that an employee must be 30 percent vested after 8 years of participation in the plan, with 10 percent additional vesting each year thereafter, so that there is 100 percent vesting after 15 years of service. S. 1179 provides that there must be 25 percent vesting after 5 years of service, plus 5 percentage points a year for each of the next 5 years and 10 percentage points a year thereafter. This is the rule which is in the amendment. This rule has the advantage of providing some vesting (at least 25 percent) at a relatively early point (after 5 years of service), while keeping the feature of S. 4 which requires full 100 percent vesting after 15 years of service. Also, under the amendment, an individual who becomes a participant in a qualified plan is permitted to count up to 5 years of preparticipation service (plus any other preparticipation years for which the employee made contributions to the plan or the employees made contributions to the plan with respect to that employee's service) for purposes of determining his vesting. Therefore, if a man begins working at age 25, and becomes a participant in the plan at 30, these 5 years of prior service will count for vesting purposes.

Also, both S. 4 and S. 1179 recognize the importance of having the vesting requirements apply to all accrued benefits, including those which accrued before the effective date of the provision. The amendment also takes this approach. Without such a rule, employees who are now older would receive the advantages of the vesting requirement only for the pension benefits which they would be able to build up in the future. Without this rule, these older employees would receive no vesting protection for benefits which they have already accrued; in the case of the older employee this would usually be the bulk of the benefits earned during his lifetime. No benefits would be accrued for preenactment service by the employee unless the employee had been a participant in the plan before enactment.

Many pension plans provide that the employee will be 100 percent vested after 10 years of service. Both bills took the position that it was appropriate to give these more liberal plans special recognition. Under the amendment, any plan which, on the date of enactment, provides for 100 percent vesting of employer contributions by the end of the tenth year in which the employee is a participant, will be able to retain this vesting schedule. However, to meet this provision the plan must be amended, if necessary, to provide that the employee must be 100 percent vested after 10 years of service with the employer, rather than 10 years of participation in the plan.

The term "year of service" will be defined under regulations jointly prescribed by the Department of Labor and the Department of the Treasury for years beginning prior to January 1, 1981. After that, "year of service" will be defined as any year where the employee has more than 5 months of service, with at least 80 hours of work each month.

The amendment provides further protection with respect to vesting by imposing excise tax on the employer where it is found that, even though the plan contains a vesting schedule which is consistent with the requirements of the bill, the employer is deliberately not meeting these requirements in practice.

Both the Department of Labor and the Department of the Treasury are to help enforce these provisions. For example, if the Secretary of Labor were to find a consistent pattern of violating the vesting rights of employees under a plan, he

might proceed in the courts for equitable remedies (i.e., mandamus, removal of trustee) and also he would certify this fact to the Secretary of the Treasury. The Treasury would then make its own review of the situation, and ordinarily would then impose the tax, based on the value of the vested rights unlawfully denied to the employees.

Combining the elements of both bills, the amendment provides that plans generally (whether or not qualified, whether or not with more than 25 participants, whether or not for owner-employees) are to be subject to these requirements. For example, certain "pay-as-you-go" pension plans are not qualified for purposes of the Internal Revenue Code because they are not funded, are not covered by S. 1179 but are to be covered by the amendment. Under the amendment, the Secretary of the Treasury is to have the authority to go into court to enjoin any plan from operating in violation of the requirements under this bill. Generally, this would force the employer to restructure his plan on a qualified basis. In any event, the employer would be barred under the law from making pension promises to his employees which might not be kept because there was, e.g., no funding of the plan.

This provision would not prevent an employer from maintaining a deferred compensation arrangement for his executives which is quite common in certain businesses. In general, executives do not need the protections provided under this amendment for the average worker.

In addition, the amendment provides certain further protections with respect to vesting. Under the amendment, for example, there could be no retirement plan with a normal retirement age later than 65. Also, the amendment follows S. 4 by providing that the pension rights of an employee cannot be assigned. However, if the plan made a loan to a participant, the employee's interest in the plan could be security for the loan.

Furthermore, under present law, there is no requirement that a qualified retirement plan must offer the option of a survivor annuity. This can result in hardship where an individual primarily dependent on his pension as a source of retirement income is unable to make adequate provision for his spouse during her retirement years should he predecease her. To correct this situation, the amendment requires that a joint and survivor annuity be offered as an option which can be exercised by the employee upon his retirement with respect to any benefit under a qualified plan which is payable as an annuity.

Also, the amendment carries forward provisions of S. 4 and S. 1179 which are designed to provide special protection to the very highly mobile employee who might not receive rights even under the vesting provisions of the bill. S. 4, for example, authorizes the Secretary of Labor to develop recommendations for modifications of Federal procurement regulations to insure that professional, scientific and technical personnel in occupations employed under Federal contracts will be protected against forfeitures of their retirement benefits. S. 1179 contains a provision which would authorize highly mobile employees to trade off high benefits which might be available under one pension plan of their employer for the right to participate in another plan with somewhat lower benefits but very rapid vesting. The amendment contains both provisions.

Generally, the vesting and participation provisions under the amendment are to apply to plan years beginning after the date of enactment. In the case of a plan already in existence, the provisions will apply in plan years beginning after December 31, 1975. However, if the Secretary of Labor should find that implementation of the vesting requirements will impose "substantial economic hardship" on the plan, he will certify this fact to the Secretary of Treasury and the effective date may be postponed for a period of up to 6 years, as recommended by the Secretary of Labor.

3. FUNDING

Retirement plans cannot provide financial security to workers unless sufficient amounts of money have been contributed to them to pay the benefits promised. However, it is clear that a significant portion of retirement plans are not adequately funded. As a result, many workers who are now promised benefits on their retirement may not actually receive these benefits because the necessary funds will not be available.

Both S. 4 and S. 1179 have similar provisions to correct this problem. Both bills recognize that, for the financial safety of workers, contributions must be made each year so that the plan will accumulate sufficient funds to pay benefits. At the same time both bills recognize that retirement benefits involve substan-

tial costs and employers must be allowed to gradually fund the cost of retirement benefits. S. 4 and S. 1179 are in substantial agreement regarding funding, and often these bills are almost identical. The amendment generally follows the format of S. 1179; where there are differences between the bills, they have been combined and the best of each bill has been used in the amendment.

Under most plans, a covered worker earns retirement benefits for each year of his current service. Both S. 4 and the amendment require that amounts to fund these "current service costs" be contributed on a current yearly basis by the employer.

Also, under many plans a covered worker is given credit for his service that took place before the plan went into effect. In this case, the plan will have an initial past service cost liability in addition to the current service costs. Under S. 4 and S. 1179 and this amendment, initial past service costs must be amortized by the employer in no less than equal payments over no more than 30 years. It is recognized, however, that multiemployer plans may be more financially secure than single employer plans, and so the amendment allows a longer funding period—40 years—for multiemployer plans. In addition, if the Secretary of Labor finds that this would impose substantial economic hardship to more than 10 percent of the employers in any plan, the 40-year period may be extended (to as much as 50 years for that plan).

The funding requirements of this amendment, as well as the funding requirements of S. 4 and S. 1179 are only minimum requirements. If an employer wishes to contribute more than the minimum he may do so. Furthermore, an employer who contributes more than the minimum will be given credit for his increased contribution based upon the additional income which his larger contribution will earn in the plan. On the other hand, to protect the revenues of the Government the existing rules governing the maximum tax deductions available for contributions to a plan generally are not changed. However, contributions needed to meet the minimum funding requirements are to be deductible.

The minimum funding requirements of both S. 4 and this amendment apply to all accrued plan benefits, and not merely to vested benefits.

Past service costs may be established by plan amendments also, for plan amendments often increase benefits for older workers based on their prior service. S. 4 and S. 1179 and the amendment require amortization over no more than 30 years of substantial increases in past service cost through plan amendment. (As noted above, a longer period is allowed for multiemployer plans). The amendment also provides an objective definition of the term "substantial," as 5 percent or more of the past service cost existing on the date of amendment of the plan. In other cases of plan amendment, increases in past service cost would be amortized over the shorter of 15 years or the average remaining service life of the covered workers. Additionally, plan amendments that reduce benefits would be treated symmetrically with amendments that increase benefits.

The costs of defined benefit pension plans are estimates, because many future events affect the pensions that eventually are paid out, and affect the value of the assets of a pension plan. Of course, estimates and experience rarely are the same and therefore plans frequently have experience losses and gains. S. 4 and S. 1179, and this amendment require that experience losses be amortized over a specific period. The amendment follows S. 1179 and requires that amortization be over the shorter of fifteen years or the average remaining service life of covered workers. This period of time will provide adequate funding to protect employees while at the same time protecting employers from potentially harsh financial burdens arising from events they cannot control, such as fluctuations in the stock market. Additionally, it is expected that this period is sufficiently long to prevent possible discrimination against certain pension plans that increase benefits as pay increases (such as "final pay plans"), and thus generally are desirable from the viewpoint of workers. Experience gains are to be treated symmetrically with experience losses.

In connection with experience losses (and for other purposes), the amendment values plan assets by using a moving average over 5 years (or over a consistently used shorter period of time, at the choice of the plan). In this way, short-run fluctuations in market value will be averaged out to reflect the long-range value of plan assets.

Both bills and this amendment recognize that at times an employer will not be able financially to meet the minimum funding requirements, and relief must be provided. In the case where there is only a single employer involved in funding

the plan, the amendment provides that the minimum funding requirements generally may be waived upon a showing that otherwise the employer would incur substantial business hardship. Any amounts waived must be amortized by the employer over no more than 10 years not less rapidly than in at least equal annual payments (and these makeup payments themselves cannot be waived. No more than 5 waivers may be granted in any 10-year period, and the plan cannot be amended to increase benefits as long as there are any unpaid waived amounts.

Both bills and this amendment include similar special funding rules for plans that are funded through individual insurance contracts. Also, both bills and the amendment relieve fully funded plans of the minimum funding requirements, as long as they remain in fully funded status.

Pension plan costs may vary greatly depending upon the actuarial assumptions and methods used. Consequently both bills and this amendment require standards of competence to be set for actuaries who are enrolled to practice with respect to pension plans. Actuaries also are to be held to a standard of reasonableness in choosing the methods and assumptions used in determining planned costs. In addition, enrolled actuaries must periodically certify the costs and the funding method and actuarial assumptions of pension plans.

Under this amendment, the minimum funding standards are to be enforced through the tax laws. If an employer fails to contribute the minimum required amounts to the plan each year, he is to be subject to an initial 5-percent excise tax on the funding deficiency. In addition, if the funding deficiency is not corrected within the period allowed after notice from the Internal Revenue Service, the employer is to be subject to a tax of 100 percent of the funding deficiency. In case of a multiemployer plan, if there is a funding deficiency for the plan as a whole, taxes would first be imposed on those employers who are delinquent in their payments to the plan. Neither of these taxes are to be deductible.

To help the employer meet the minimum funding requirements and to help the Internal Revenue Service enforce these taxes, most plans will be required to keep a new account that will show the amounts that must be funded each year and also the amounts contributed by the employer. In addition, this amendment authorizes appropriations of the receipts from these taxes to be paid to the Pension Benefits Guaranty Corporation, to strengthen the insurance program.

Under the amendment, the minimum funding standards are to have the same effective date as the vesting provisions. These requirements are to be effective upon enactment for new plans established after enactment. For existing plans, they are to apply to plan years beginning after 1975. However, on a finding by the Secretary of Labor that substantial economic hardship would otherwise result, the application to a plan of all or part of the funding requirements may be delayed as much as 6 years.

4. PORTABILITY

The mobility of workers in the United States has been increasing steadily. However, employees who move from job to job not only have difficulties earning pension benefits but also have difficulties collecting benefits which they have earned. On retirement, these employees must deal separately with each employer to arrange for benefits; additionally, they may have difficulty in contacting their former employers because of changes of name or address, or because of their own insufficient records.

Both S. 4 and S. 1179 include several provisions to help solve these problems. As with other provisions, the amendment includes the best of both bills in the portability area. Both bills and this amendment have very similar provisions to establish a voluntary central portability fund. Under S. 4, S. 1179, and this amendment, where the employers agree, workers who change jobs may have their vested retirement credits transferred to the central fund. Under the amendment, the fund would be operated by the Pension Benefit Guaranty Corporation. The fund is to establish an account for each worker on whose behalf it receives money, invest its assets, and pay each participant a benefit on retirement. Alternatively, the worker may have the amount in his account transferred to a retirement plan of his new employer. Transfers to plans of new employers are to buy actuarially equivalent benefits in the new plan. However by not requiring that these benefits be vested, the amendment gives the worker the maximum flexibility in acquiring retirement benefits in the plan of his new employer. (For example, he may trade off full vesting in the transferred funds in exchange for being treated as having additional creditable years of service.)

Under the amendment, transfers to the central fund and transfers from the fund to the plan of a new employer are to be on a tax-free basis. Also, income earned by the central fund is to be tax free until it is paid out to participants or beneficiaries. Payments to participants and beneficiaries from the fund generally will be treated for tax purposes as payments from a tax qualified retirement plan.

This portability program will be wholly voluntary, for both employers and employees. A plan need not pay any assets to the central fund unless it voluntarily registers to participate in the central portability program. Additionally, moneys will not be paid to the central fund on behalf of a worker covered under a registered plan unless the worker, individually and voluntarily, requests that this payment be made.

The portability program provided in this amendment also includes some tax features of S. 1179 in addition to those described previously. Under this amendment, if an employee receives a complete distribution of his interests in a tax qualified retirement plan, he generally will not be taxed on the distribution if he contributes the amount received to the central portability fund or to another qualified plan. To be eligible for this special treatment, the amount received must be recontributed within 60 days after receipt. In this way, employees who receive a lump sum distribution on leaving employment before retirement will be able to keep these moneys in a tax qualified plan until they retire.

In addition, the provision described above that requires plans to report to Social Security regarding employees who leave employment with vested retirement benefits is an integral part of the portability program. In this way, employees who have earned vested retirement benefits from a number of employers will be able to acquire sufficient information on retirement so they can contact their previous employers to claim the retirement benefits they own.

5. PLAN TERMINATION INSURANCE

Despite the accelerated funding of pension plans that would be required under the bill, workers might not receive all the benefits they have been led to expect if the plan terminates before all the funds for those benefits have been provided. Such a termination might occur, for example, if an employer sells his business or simply stops business. About 19,400 workers lost benefits in 1972 because of pension plan terminations. For that reason, a method of ensuring that employees receive all their vested benefits should be included in the law.

Both S. 4 and S. 1179 provide systems of plan termination insurance which, despite certain differences, are substantially similar in most respects.

Under both bills, most pension plans are required to fund the insurance with premium paid by the employer. Limits on the amounts of insurance payable to each plan participant are set to prevent the depletion of the insurance fund by excessive payments to highly paid employees. In order to prevent pension plans or additional benefits from being created solely for the purpose of taking advantage of the insurance system, plans are required to remain in operation for certain periods before they would be covered by the insurance. Employers are required, when they are solvent, to reimburse the insurance fund for its losses, up to certain limits, as a precaution to prevent employers from terminating plans to take advantage of the insurance. Except for relatively technical matters, such as the amounts of the limitations, both bills were alike as to these and other provisions.

This amendment combines the features of the two bills and adjusts their differences so as to provide an improved system of plan termination insurance. S. 4 would have had the insurance provisions administered by the Secretary of Labor, while S. 1179 provides for a separate corporation to be administered by three directors, the Secretaries of the Treasury, Labor, and Commerce, with the Secretary of the Treasury to be the Chairman of the Board of Directors unless the directors should prefer another director as the chairman. Under this amendment, the program would be administered under a separate corporation within the Department of Labor with the Secretary of Labor as the chairman.

S. 4 would have based the rate of premiums payable by each plan upon a percentage of its unfunded vested liabilities. S. 1179 generally imposes a tax of 50 cents per year per plan participant. In order to avoid problems caused by actuarial mistakes or the fluctuations in value of plan assets, the amendment provides for a premium of $1.00 per year per participant. To eliminate some of

the costs of collection, these premiums are to be collected as taxes by the Internal Revenue Service.

S. 4 provided that insurable benefits could be covered by the insurance upon the effective date of the insurance title (one year after date of enactment of the bill), while S. 1179 would delay coverage for three years after that time in order to enable the insurance fund to be built up by collection of premiums. Under this amendment, all plans would be covered after two years of premium collections—sooner if the insurance corporation decides before that time that it has enough funds to begin coverage earler. Generally, premium taxes are to be payable by employers beginning in 1975. Therefore, coverage would generally begin not later than 1977.

A difference existed in the two bills as to the extent of the employer's liability to the insurance corporation to reimburse it for losses caused by its coverage of that employer's terminated plan. Under S. 4, the liability would have been limited to 50 percent of the employer's net worth. S. 1179 limits liability to the lesser of 50 percent of the net worth or 10 percent of the loss. Under this amendment, the employer's contingent liability is limited to 100 percent of the loss up to 30 percent of his net worth. It is believed that this contingent liability will be sufficient to prevent employers from terminating plans to take advantage of the insurance for themselves and their employees.

This decision also permits the elimination of the "phasing-in" schedule of S. 1179, which would have permitted only gradual coverage of newly created plans and benefits.

Under S. 1179, employers would be given the option of avoiding their liability for the insurance corporation's losses by paying an extra payment of 20 cents per participant per year. Under the amendment, the insurance corporation would decide, initially and from year to year, the amount of the surcharge that employers must pay to avoid extra liability. Since that extra charge would be voluntary for employers, it would not be collected as a tax, and the employers could, if they should so desire, elect instead to obtain protection against liability from the private insurance sector.

To prevent the creation of new plans and benefits in order to take advantage of the insurance, in cases where the employer has contingent liability for losses, S. 1179 would provide a three-year waiting period before vested rights under newly created plans and plan amendments granting additional benefits could obtain the insurance protection. Where employers seek to eliminate contingent liability by paying the extra charge, a five-year waiting period would apply. In general, these waiting periods would be retained in the amendment.

Under S. 1179, even if an employer chose to pay the additional charge to avoid employer liability, he would remain liable to the insurance corporation if he stayed in business or was a party to a reorganization after the termination of his plan. This provision was believed necessary to prevent an employer from arranging to have the insurance proceeds eliminate his funding deficiency, by terminating the plan, and then remaining in business and possibly starting a new pension plan. Since S. 4 did not provide an avenue by which an employer could escape liability, there was no analogous provision in S. 4.

Under the amendment, this provision would be retained in its general intent. However, S. 1179's one-year period following termination during which an employer would retain liability if it returned to business or was a party to a reorganization, would be lengthened to three years.

Since under the amendment the employer's contingent liability would not exceed 20 percent of net worth, it would obviously be collectable only from solvent employers. However, if the employer should contract with the insurance corporation to pay his liability in installments (as he might do under both bills), the question might eventually arise as to whether the lien created by the liability is superior to some other creditor's lien. Both bills provided that this lien would always be inferior to tax liens, but S. 1179 also provided that this lien would be inferior to the claims of a general creditor that existed as of the termination. The provision of S. 1179 is intended to protect the credit status of employers. The amendment retains the provision, but only as to claims perfected by the filing of liens not later than 30 days following the termination.

The sponsors of both bills recognized that withdrawals of substantial employers could weaken multiemployer plans. To protect against this, S. 1179 introduced a number of provisions. Employers who had been contributing a specified portion of the plan's premiums would be required to pay into escrow

their share of any potential employer liability, or to post a bond, upon their withdrawal from the plan. If the plan terminated within five years thereafter, the payment or the bond would be turned over to the insurance corporation. If there were no termination in that period, the bond or escrowed amount would be returned. Upon the actual termination of a multiemployer plan, the liability of each employer would be calculated in accordance with his proportion of the contributions for the total premiums paid into the plan during the previous five years.

Under the amendment, these rules would be retained, together with a provision from S. 4 allowing the insurance corporation to separate a multiemployer plan into two or more plans whenever it determines that employer withdrawals have endangered the rights of the employee-participants. The employers in the plan would, under the amendment, also be given the option of entering into reciprocal indemnification agreements among themselves to protect the participants and beneficiaries and the insurance corporation by requiring contributions toward eventually determined employers' liabilities from previously withdrawn employers. The amendment gives the insurance corporation the right to waive both of these provisions where it is satisfied that the members of the multiemployer group have entered into a satisfactory indemnification agreement that will protect against plan failure or at least insure that liabilities will be paid in the event of plan failure.

S. 4 provided that benefits of participants and beneficiaries derived from vested rights would be insured. S. 1179 stated that all ancillary benefits to which a participant or his beneficiary would be entitled upon occurrence of a contingency would also be insured. Under the agreement, it would be made clear that any vested ancillary benefit would be protected by the insurance system, to the extent of the coverage limitations to be discussed later.

Both bills provided that premium rates, after the first three years of operation of the fund, could be reset by the insurance corporation based upon its loss experience. S. 4 gave each House of Congress the right to veto a change; S. 1179 provided that no change would go into effect until approved by both Houses by concurrent resolution. The amendment generally follows S. 1179 but requires that all proposed adjustments are to be transmitted to both the House Ways and Means Committee and the Senate Finance Committee, and to the House Education and Labor Committee and the Senate Labor and Public Welfare Committee.

It was recognized that employers might be tempted to create new benefits for themselves or for favored employees, terminate their plans, and then (in accordance with provisions of their plans) allocate existing plan assets to these benefits. Since the benefits would be new, they would not yet have survived the three-year (or five-year) waiting period during which they would not be insured. However, because assets that might have been used to cover the insurable benefits were used instead to cover uninsurable benefits, the insurance corporation would suffer an additional loss.

To protect against this problem, S. 1179 provided for a required system of allocation of plan asset upon termination that would be applicable only in insured terminations. It required plan assets to be allocated first against insured benefits, and, to prevent allocation for ongoing pension payments which had been increased in anticipation of the termination, it required that the allocation for such payments be based on their level three years prior to the termination, S. 4 included a more general requirement of allocation upon termination that was applicable whether the insurance provisions came into effect or not. Under the agreement, the general S. 1179 allocation provision will be applied to all terminations, but the special three-year limitation on benefits already in pay status would not be applied unless the termination resulted in insurance losses.

As another precaution against abuse of the insurance program, S. 1179 allowed the insurance corporation to recapture payments made by the pension plan within the three years prior to its termination to the extent the payments exceeded the limitations on the amounts of insurance payments. This rule would be retained under the amendment; but, as in S. 1179 no payments could be recovered in the event of death or disability.

Although the limitation on insurance payable to a plan participant is essentially similar in that both bills limited the payment to 50 percent of the recipient's average monthly wage in his highest-paid five years (in S. 4, during the highest-paid five years after the registration of the plan under the Act), the

additional limitation of $750 monthly proposed in S. 1179 would be accepted in place of S. 4's $500 monthly.

S. 1179 denied coverage to unqualified plans or to plans that lost their qualification. Since, under the amended bill, most plans must qualify under the Internal Revenue Code, this provision is no longer needed. As a result, employees will not lose coverage because of the transgression of their employers.

Certain provisions of S. 1179 that are, for the most part, of a technical nature are included in substantially the same form in the amendment. For example, the amendment names the insurance fund the Pension Benefit Guaranty Fund and names the corporation the Pension Benefit Guaranty Corporation; it allows the corporation to borrow up to $100 million from the Treasury as a safeguard against unforeseen financial problems; it specifies that all ancillary and retirement benefits payable with respect to any one employee may not exceed the limitation set (generally, the lesser of $750 monthly or 50 percent of the participant's average monthly wage) on payment of insurance benefits.

Furthermore, under the amendment, plans with 25 or fewer employees would be covered by the insurance, as is provided under S. 1179, although not under S. 4. It is believed that the technical safeguards against abuse of the insurance program that are introduced from S. 1179 permit small plans to be covered without endangering the insurance program.

For much the same reasons, persons owning substantial interests in employing firms who are also employees will be covered under the amendment. However, the limitation on insurance payments to these participants would include a subtraction for pro rata shares of any accumulated funding deficiency.

In accordance with S. 1179, the amendment will require a successor employer to incur the liability of its predecessor for liability to the Guaranty Fund. Such a successor employer comes into being when its predecessor ceases to exist because of a change of identity, a liquidation, or a reorganization. In such a case, the periods of existence of both the predecessor and the successor may be lumped together in determining the passing of the three-year waiting period required before plans or new benefits are insurable.

Also, as under S. 1179, the amendment authorizes the Guaranty Corporation to terminate a plan if the corporation, upon notification from a plan administrator that his plan is to be terminated, determines that the plan assets will be insufficient to discharge all insured benefits. The corporation may also terminate a plan upon learning of certain specified conditions that, in general, indicate that the financial status of the plan has reached the point at which the employees' pension benefits are endangered. To prevent an arbitrary termination by the corporation, judicial review of contested terminations by the corporation is provided.

Certain technical provisions in the amendment that peculiarly relate to the tax aspects of the situation are also taken from S. 1179. For example, a beneficiary may claim a refund of tax imposed upon him for a previous tax year if the Guaranty Corporation subsequently recaptures a pension distribution made to him in that previous year. These recaptures are generally permitted, in order to avoid abuses of the insurance system, if excessive distributions are made during the three years preceding a plan termination. A remedy is given the person from whom the distribution is recaptured by allowing him a year after the recapture in which he may file a refund claim, even if he otherwise would be barred from filing a claim by the statute of limitations. The claim would be for the tax he paid on account of the recaptured distribution when it was originally distributed to him from the plan.

6. FIDUCIARY STANDARDS

To ensure that workers covered by employee benefit plans receive the benefits they are promised, both S. 4 and S. 1179 include new Federal standards of conduct for fiduciaries who deal with plan assets and for persons who are parties in interest with respect to the plans. In the area of fiduciary standards the amendment takes the best parts of both bills to establish an effective set of rules governing the conduct of fiduciaries and parties in interest.

Generally, under the amendment, the Secretary of Labor will have primary responsibility for administering standards of conduct with respect to fiduciaries. Under the amendment fiduciaries must administer employee benefit plans solely in the interest of participants and beneficiaries. In addition, following S. 4, fiduciaries must act as would a prudent man in a like capacity and familiar with such

matters. Also, employee benefit plans are to be subject to certain restrictions regarding investments in employer securities, and investments abroad. Where fiduciaries breach these standards of conduct, the Secretary of Labor (and participants and beneficiaries of the plan) may bring civil actions to surcharge the fiduciaries for losses incurred by the plan or profits which they have gained as a result of the breach. Civil actions also will be available to enjoin fiduciaries or otherwise remedy a breach of conduct.

The amendment also includes certain specified prohibited transactions involving employee benefit plans. These prohibited transactions will be enforced both by the Secretary of Labor and the Internal Revenue Service. Under the amendment, as under S. 4, the Secretary of Labor will have primary responsibility for enforcing these rules with respect to fiduciaries. The Internal Revenue Service will have primary responsibility for enforcing prohibited transactions with respect to parties in interest, through an excise tax as in S. 1179. (This reflects the division of responsibilities between the two departments in S. 1179, and also follows the focus of enforcement shown in S. 4.)

Under S. 4, fiduciaries are required to discharge their duties (with regard to investment and other matters) with the care of a prudent man acting in a like capacity and familiar with such matters. The prudent man rule of S. 4 is included in the amendment instead of the corresponding "jeopardizing income or assets" provision in S. 1179.

Both bills included limitations on the acquisition and holding of employers' securities by employee plans. Under the amendment, these rules will be administered by the Secretary of Labor through the civil action provisions. The two bills differed on the limitations on acquisition of employers securities; for the most part, the provisions of S. 4 were followed in this respect. Under the amendment, not more than 5 percent of the assets of a pension plan may be in employer securities. This limitation generally is not to apply to profit-sharing and stock bonus plans. In addition, the rules of S. 4 regarding diversification of investment by profit-sharing and stock bonus plans are included in the amendment.

Transactions involving real property leased between employee benefit trusts and employers are treated similarly to acquisitions of employer securities. The 5-percent limitation is an overall limit that applies both to employer securities and leases.

If, on the date of enactment, a plan has more employer securities or leased property than is allowed under the bill, the plan must divest itself of this excess pursuant to the rules of S. 4. One-half of the excess must be divested within 5 years from enactment, and all of the excess must be divested within 10 years from enactment.

The prohibition in both S. 4 and S. 1179 against investment of assets outside the United States also will be administered solely by the Labor Department, under the amendment.

The amendment includes the rules of S. 4 that govern civil actions to be brought by the Secretary of Labor, and by participants and beneficiaries of the plans. Therefore, the amendment includes the S. 4 rules regarding the civil liability of a fiduciary for breach of his responsibility, and the S. 4 rules regarding liability of joint fiduciaries, prohibition of exculpatory clauses, service and venue, and other similar provisions.

S. 1179 provides that parties in interest (as well as fiduciaries) who participate in a transaction shall, under certain circumstances, be personally liable to the plan for any losses incurred by the plan or profits realized by the parties in interest as a result of a fiduciary breach. This provision is included in the amendment.

The amendment includes the rules in S. 4 regarding the prohibition against certain persons convicted of specified crimes holding positions with retirement plans.

Both S. 4 and S. 1179 include a number of specific prohibited transactions in addition to the general rules regarding fiduciary responsibility. Under S. 1179, these prohibited transactions are to be enforced both by civil actions brought by the Secretary of Labor (and others) and by the Internal Revenue Service through an excise tax. The main focus of the excise tax in S. 1179 is on the party in interest. This contrasts with S. 4, which puts primary responsibility for avoiding prohibited transactions on the fiduciary. These two provisions of S. 4 and S. 1179 are brought together in the amendment by providing that the Secretary of Labor may bring civil actions against fiduciaries for breach of the

prohibited transactions, and the Internal Revenue Service will enforce the prohibited transactions with respect to parties in interest. (Consequently, the provisions of S. 1179 that impose an excise tax on fiduciaries are not included in the amendment.) In addition, while the party in interest is to be subject to an excise tax, payment of this tax will not relieve the party in interest from his obligation to the plan for any losses it has incurred and any profits he has made through participation in a prohibited transaction.

The prohibited transactions specified in S. 4 and S. 1179 are very similar, and in several instances are identical. In general, the format of S. 1179 is followed in the amendment, with appropriate changes.

In several cases, S. 1179 defined a prohibited transaction in terms of dealings involving the "income or assets" of the plan. Under the amendment, the term "income" has been deleted to remove any inference that this rule prohibits investment in growth assets that provide little current income. On the other hand, since "income" constitutes "assets", no distinction is to be made between the prohibited transaction rules regarding employee benefit plans and the corresponding self-dealing rules regarding private foundations.

S. 1179 specifically prohibits payment of compensation or reimbursement of expenses to a party in interest by a trust. This has been deleted from the list of prohibited transactions solely because the substance of this rule is included in other prohibited transactions specified in the amendment.

The prohibition against a fiduciary dealing with the trust on his own account generally follows the version of S. 4, which is broader than that of S. 1179.

The prohibition in S. 1179 against investments which jeopardize the income or assets of the plan has been eliminated, since the amendment investment standards will be governed by the prudent man rule and enforced by the Secretary of Labor.

The anti-kickback rule of S. 1179 is broadened to include the receipt of consideration by a fiduciary or a party in interest from any party dealing with the trust in connection with a transaction involving the trust.

Both bills and the amendment include a number of special rules and exceptions to the prohibited transaction provisions. Under S. 4, the Secretary of Labor may provide exceptions or variances from the prohibited transaction rules by classes of transactions or by individual transactions, pursuant to regulations or individual rulings. The amendment also allows such variances. Under the amendment, regulations and rulings allowing variances from the prohibited transaction provisions are to be issued jointly by the Secretaries of Labor and the Treasury. Variances will be provided only where both Secretaries find that the plans involved will not be impaired, the variance does not present serious administrative problems, and adequate safeguards are provided for participants and beneficiaries.

In the usual case, a variance will not meet the administrative requirements if it would depend on the transaction occurring at a fair price. However, if a recognized standard market price is available, such as the mean price for the day of the transaction of a stock traded on a national exchange, and if this would be an appropriate price for all cases covered by the variance, this could meet the administrative requirements.

Regulations providing variances will be issued only after full public hearings. Similarly, it is contemplated that interested parties will be allowed to intervene in any request for an individual variance, and it is contemplated that there will be sufficient notice of application for such a variance so that this right of intervention will be effective.

The amendment includes the provision in S. 1179 that prevents avoidance of the prohibition against sale or exchange through mortgaging property. The amendment also includes the provision in S. 1179 that allows loans by a plan to parties in interest who are plan participants. However, the amount of the loan is not to be limited to the party's vested interest, and the nondiscrimination rule is clarified so that loans to highly compensated employees are not to be in amounts greater than loans to other employees. Additionally, the prohibition of loans to owner-employees and proprietary employees is retained.

The provision in S. 1179 that allows parties in interest to guarantee loans to a trust by an independent party is not included in the amendment. (However, guarantees could be allowed by variance.) The exception in S. 1179 allowing compensation for goods, etc., furnished to the trust also is not included in the

amendment. However, there is another exception allowing payment to a fiduciary for his services. Also, the exception allowing provision of goods, etc., by a trust to a party in interest is eliminated from the amendment, since it is not appropriate in the context of employee benefit trusts.

Under S. 1179, certain reorganizations and other corporate transactions are not treated as prohibited transactions. This exception is not included in the amendment; acquisition of securities in such transactions must conform to the general rules relating to acquisitions of employer securities, or could be allowed by variance.

The provision of S. 4 allowing compensation to a fiduciary for services rendered to a trust is included in the amendment, instead of the comparable provision in S. 1179. The provision in S. 1179 allowing fiduciaries and parties in interest to receive benefits to which they are entitled under the plan is included in the amendment, but additional language that merely stated the obvious is removed.

Finally, with respect to special rules, the S. 1179 provisions allowing fiduciaries to serve in other offices, and the S. 1179 provision regarding exclusions from the prohibited transaction rules are included in the compromise amendment.

To prevent undue hardship, S. 1179 provides transition rules for situations where employee benefit trusts are now engaging in activities which do not violate current law but which would be prohibited transactions under the bill. All of the S. 1179 transition rules are included in the amendment, except for the rule that grandfathers the holding of bonds described in section 165(g) (2) (C) of the Internal Revenue Code. These bonds will be treated as employer securities and will be subject to the general rules governing the acquisition and holding of employer securities.

The Secretary of Labor and the Secretary of the Treasury will jointly issue regulations for the prohibited transaction provisions. In addition, following the lead of S. 4, an agency cannot audit a plan more than once a year with regard to the fiduciary responsibility provisions, unless the appropriate Secretary finds there is reasonable cause to audit more frequently. However, this does not affect the existing rules governing the Internal Revenue Service with respect to the audit of a plan for vesting, funding, nondiscrimination, and other provisions.

Under the amendment, all rules governing fiduciary standards except the prohibited transaction rules will be effective on January 1, 1974. The prohibited transaction rules will be effective January 1, 1975.

7. ENFORCEMENT

The amendment embodies the provisions of S. 1179 which are intended to provide additional opportunities for redress in case of disagreement with the decisions of the Internal Revenue Service on pension matters. Both employees and employers will be allowed to appeal determination letters issued by the Internal Revenue Service to the United State Tax Court after exhausting their remedies under the Internal Revenue Service's administrative procedures. Employees as well as employers are to be allowed to participate in the Service's administrative proceedings. If either the employer or the employee exercises his right of appeal and requests the Tax Court to issue a declaratory judgment, the other party is to have the right to intervene in the proceedings.

Under this provision all interested parties to the controversy are to have an opportunity to participate in the administrative determination of the matter and to have an opportunity to contest the Internal Revenue Service's determination of the matter.

A second enforcement procedure under the amendment requires an arbitration procedure to be provided in each employee benefit plan, for settlement of claims under the plans. The Department of Labor will prescribe regulation for the type of arbitration provisions which are to be included in the plans.

The amendment also provides, as does S. 1179, that a $1 audit-fee-excise tax is to be imposed on the employer for each plan participant in a qualified employee plan to provide for Internal Revenue Service costs of administering the pension provisions. For purposes of administration and collection of this tax, the employment tax provisions of the tax law are to be applicable. However, this tax is to be deductible as a trade or business expense. The tax is with respect to participants of plans which are qualified under the tax laws and does not apply to agencies or instrumentalities of the United States, a State, or political subdivision.

Mr. TUNNEY. Mr. President, the pension legislation pending before the Senate today ranks among the most crucial measures this body has considered in the past decade. Today more than 30 million American workers participate in private pension plans with assets now totaling approximately $150 billion; it has been estimated that these figures will grow to 42 million workers and over $210 billion by 1980. Pension plans today represent the largest unregulated financial institution in the Nation.

The price for that inattention has been high—too high. There are workers today who labored for 20, 30, and even 40 years for a company and have never received a dollar in pension benefits because the company went bankrupt or otherwise went out of business. Others lose their pension rights due to fraud and mismanagement of the pension funds and the absence of standards governing their administration. Still others are denied these rights because, for one reason or other, they change jobs and thereby forfeit all the benefits they had accumulated over years of service. These inequities must be eliminated.

It was for this reason that I was pleased to cosponsor S. 4, the Retirement Income Security for Employees Act of 1973.

Experts have long recognized that any comprehensive pension reform must encompass a minimum of five areas: First, vesting; second, funding; third, fiduciary standards; fourth, reinsurance; and fifth, portability. The proposed legislation addresses each of these issues.

Vesting refers to the guarantee of a pension to a worker who works for a particular business over a specific period of time. The bill before the Senate today provides minimum vesting requirements which ensure that workers will acquire a vested, nonforfeitable right to 25 percent of their accumulated benefits after 5 years of service, and a full 100 percent after 15 years' service.

Funding provisions are provided to insure that the necessary assets to pay a vested pension are always available.

Portability refers to the ability of employees to transfer pension rights when they change jobs. The bill before the Senate establishes a central fund which will greatly expand pension portability in the United States.

Reinsurance involves the preservation of pension rights for employees of businesses which terminate their pension plans. Under the bill, a pension plan termination program must be created to insure that vested pension obligations will be met in the event a plan is terminated and the assets are insufficient to protect employees' vested rights.

Finally, this bill creates fiduciary standards to guard against fraud and mismanagement. There are simply too many examples of businesses investing the assets of pension funds in the stock of the company itself—or even worse, tampering with those assets when the company suddenly needs extra cash. This bill sets forth tough rules of conduct for the trustees of these funds to insure that decisions are made in the interest of the employees.

There are other problem areas which this bill addresses as well. Existing law imposes a discriminatory limitation on the efforts of self-employed individuals to establish pension plans for themselves and their employees, a limitation which is not applicable to corporations. This inequity should be eliminated and parity should be established

between corporation and self-employed pension programs. The pending bill will partially alleviate this problem by raising the tax-deductible limitation on self-employed plans from $2,500 or 10 percent of earned income—whichever is less—to $7,500 or 15 percent, whichever is less.

Finally, the bill recognizes the special problems of workers in the defense and aerospace industries.

It calls for an immediate review of Federal procurement regulations and potential alternatives to current regulations to insure that the Government is utilizing its own great purchasing power in a maximum effort to protect the pension rights of these workers.

Mr. President, this reform of the Nation's private pension system is long overdue. This bill represents the product of two distinguished Senate committees following years of hearings and intensive study. I strongly urge the Senate to act favorably and swiftly on this landmark legislation.

Mr. ROBERT C. BYRD. Mr. President, how much time remains to all sides on the unfinished business?

The PRESIDING OFFICER. The Senator from New Jersey (Mr. Williams) has 60 minutes remaining, the Senator from Wisconsin (Mr. Nelson) has 67 minutes, the Senator from New York (Mr. Javits) has 68 minutes, and the Senator from Nebraska (Mr. Curtis) has 65 minutes.

Mr. ROBERT C. BYRD. This is time on the bill?

The PRESIDING OFFICER. That is correct.

Mr. ROBERT C. BYRD. In other words, are we to understand that the Senate has only consumed less than 2 hours today on the bill?

The PRESIDING OFFICER. The Senator is correct.

Mr. ROBERT C. BYRD. I thank the Chair.

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PROGRAM

Mr. ROBERT C. BYRD. Mr. President, the program for tomorrow is as follows:

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Upon the conclusion of the aforementioned orders, the Senate will resume the consideration of the unfinished business, S. 4. Time will begin running on amendment No. 505 offered by the Senator from Wisconsin (Mr. Nelson). The yeas and nays on this amendment have already been ordered.

If this amendment is agreed to, it is my understanding that the Senator from Wisconsin (Mr. Nelson) may not call up amendment No. 506. However, if amendment No. 505 is rejected, it is my understanding that the Senator from Wisconsin may call up amendment No. 506.

Upon the disposition of the Nelson amendment or amendments, the Senate will proceed to take up the Thurmond amendment. So, there will be yea-and-nay votes tomorrow.

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[From the Congressional Record—Senate, Sept. 19, 1973]

RETIREMENT INCOME SECURITY FOR EMPLOYEES ACT

The PRESIDING OFFICER (Mr. ABOUREZK. Under the previous order the Senate will now proceed to the consideration of the unfinished business, S. 4, which the clerk will state.

The assistant legislative clerk read as follows:

A bill (S. 4) to strengthen and improve the protections and interests of participants and beneficiaries of employee pension and welfare benefit plans.

The Senate resumed the consideration of the bill.

The PRESIDING OFFICER. The pending question is on amendment No. 505 to amendment No. 497 by the Senator from Wisconsin (Mr. Nelson), which the clerk will state.

The assistant legislative clerk read as follows:

In title VII, on page 30, line 13, strike "$100,000" and insert "$60,000".
On page 47, line 22, strike $100,000" and insert "$60,000".

The PRESIDING OFFICER. The Senator from Wisconsin is recognized.

Mr. NELSON. Mr. President, amendment No. 505 is designed to put a ceiling on the amount of pension that may be supported by tax deductible dollars. The Senate Finance Committee bill provides first, that there is, for all practical purposes, no limit on a pension that may be paid to a corporate executive of an ordinary corporation as contrasted with a proprietary or closely held corporation.

More precisely the limit is 100 percent of his salary but, of course, there is no limit on salary of corporate executives. The Finance Committee leaves that aspect of the law alone. So the amendment that was reported by the Finance Committee does not affect or change the current law respecting ordinary corporations but it does set a $75,000 limit on pensions for the proprietary and closely held corporations.

Therefore, first, the bill discriminates against proprietary and closely held corporations as contrasted with General Motors and all other ordinary corporations. Secondly, I consider a $75,000 limit on a pension paid out of tax-deductible dollars to be excessive. The question then is, What should the limit be? The amendment I have offered to the Finance Committee provides two things: First, it places a limitation of $45,000 on the pension that can be paid to anyone from tax deductible dollars; and second, the limitation applies across the board. It applies to professional or proprietary corporations—doctors and lawyers when they are incorporated; it applies to all other ordinary corporations, large or small. So the limit proposed in my amendment treats the largest and the smallest corporations exactly alike.

There have been many complaints in the tax law regarding pension discrimination against small businessmen. In order to make the tax code as equitable as possible and considering how much taxpayers' money we are giving away here, I think all corporations ought to be treated the same.

The second aspect of my amendment simply reduces the limit on the maximum pension that can be paid. Instead of allowing 75 percent of compensation up to a maximum of $100,000—in other words, instead of a maximum pension of $75,000 a year—my amendment would provide for a maximum pension of $45,000 a year that could be paid by tax deductible dollars.

A feature common to this amendment and to the Finance Committee provisions is that a pension fund could be established by an older manager or by an owner of a business, say 55 years of age, and the business could still pay into the pension fund a sufficient amount of money to pay that 55-year-old executive a pension of $45,000 a year for him at age 65. The pension would have to be funded over a 10-year period.

I consider that to be certainly a very fine and adequate pension. If the individual is 45 years old the corporation can put enough money in so that within 15 years the tax-deductible dollars put into the pension fund will be sufficient to pay that individual at age 65, a maximum of $45,000 in pension per year.

What we are talking about here is a very fundamental principle. How many dollars—tax deductible dollars—should we allow to be set aside to pay pensions for highly salaried executives? That is the question.

One might argue that nothing should be set aside from tax-deductible funds, or $10,000 should be the maximum pension, or $30,000, or $40,000, or $75,000, or 100 percent of the final salary, which could go as high as $200,000 or $300,000 a year in pension.

I think $45,000 a year in a pension funded by tax deductible dollars is quite high enough, if not too high, but certainly it is a very fine pension.

Private pensions now cost the Treasury $4 billion a year. Some 40 million employees in this country are not covered by any private pension plan at all, but they are paying taxes and they have to pay taxes to make up the $4 billion Treasury loss from the part of the pension fund that is supporting high salaried executives, as well as middle income and lower salaried employees. If General Motors or IBM or IT&T or any of the rest of the great American corporations want to pay $100,000 a year or $200,000 a year in pensions, they are free to do so. We let them put in tax deductible dollars sufficient to pay up to $45,000 a year in pensions, and if that is not sufficient, if they consider the executive they have hired or desire to hire worth much more, fine. He may very well be worth much more money. But they ought to take that from money on which they pay taxes.

There are many people that corporations figure are worth more than $45,000 in pensions. I have a list here of random examples of pensions provided certain executives. Dow Chemical, for example, paying one of their executives an annual salary of $322,257, is making contributions which will allow him to have an annual pension of $157,400. I have no complaint about that as long as it is not a pension paid from tax deductible dollars in excess of $45,000. That is what the debate is about.

I would not like to be on a platform before any audience of American citizens and try to defend the use of tax deductible dollars to pay

pensions of $137,000 a year. It is unconscionable to spend that amount of tax deductible dollars for pensions.

The whole tax structure is shot through with gaping loopholes, and this is another huge loophole.

No wonder the American public is losing confidence in Congress, in public officials, in the whole political system. If we allow this gaping loophole to remain, they will lose even more confidence in Congress.

Mr. President, how much time do I have left?

The PRESIDING OFFICER. The Senator from Wisconsin has 18 minutes remaining.

Mr. NELSON. I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. CURTIS. Mr. President, I yield myself 10 minutes.

Mr. President, if I could have the attention of the distinguished Senator who has offered this amendment, I would like to ask him a few questions.

Would the Senator tell us what group would be affected by the Senator's pending amendment? Does it affect all corporations?

Mr. NELSON. Yes. In my amendment the maximum pension that may be paid to any individual is 75 percent of $60,000—75 percent of the highest 3 years of earnings computed against an income that may not be more than $60,000.

Mr. CURTIS. I understand what the figures are. My question is, To what corporations does the Senator's present amendment apply?

Mr. NELSON. All of them. It applies to professional corporations, proprietary corporations, closely held corporations—all corporations, large and small, are to be treated alike under this amendment.

Mr. CURTIS. I think there is a serious question about that. I believe the distinguished Senator's amendment does not affect any of the corporations that he alluded to with these high retirements. I believe that the Senator has amended that section of amendment 496 which deals only with some of the so-called smaller corporations.

Mr. NELSON. Mr. President, counsel advises me that the Senator may be right.

Mr. CURTIS. Yes. I think that the amendment we are being called upon to vote on would not touch any of those corporations the Senator has mentioned in his remarks. However, I would like to ask the Senator for some information.

Mr. NELSON. Mr. President, if it does not, we will amend it so that it does.

Mr. CURTIS. Mr. President, I would like to ask another question or two. Is it not true that wages and salaries paid in a business are tax deductible?

Mr. NELSON. The Senator is correct.

Mr. CURTIS. Mr. President, would the Senator regard a salary—whether it is low or medium or high—as tax subsidized due to the fact that it is deductible from gross income for the taxpayer?

Mr. NELSON. A salary is deductible, if it is reasonable in amount, because it is paid out to the employee and because under the tax laws this is classified as a deductible business expense. But in the case of amounts set aside for pensions which the amount is not currently paid over to the employee, the tax law in several respects limits the deduc-

tion. In the case of a professional corporation we are talking about a person, or group of persons, earning income for services performed, doctors, lawyers, or whatever they may be. So, the salary that that executive receives himself in reality is out of what would in any event be his own personal income.

Mr. CURTIS. Frankly, I know of no Nebraska complaint against fixing a limit perhaps even below the Senator's suggested figure for retirement because we do not have that kind of retirements.

However, I think the issue involved here is whether the Government shall embark upon a program of determining what retirement benefits shall be. If we say that pension contributions can be regulated because the contributions are tax-deductible, then it follows that the Government can put a ceiling on salaries because they are tax deductible. So, I think what we have to weigh is tolerating some abuses on the one hand that we propose the directors, in a sense proprietary and others, will or do something about embarking upon a policy of putting a ceiling on salaries.

Perhaps that should be done. I do not know. I am not advocating it. However, are we to say to our potential geniuses, whether they are 15 years old, 5 years old, 25 years old, that the Government of the United States is not going to have the sky as the limit, but that this is going to be the limit. That is the issue involved.

Mr. BENTSEN. Mr. President, would the Senator from Nebraska yield?

Mr. CURTIS. I yield.

Mr. BENTSEN. Would the Senator from Nebraska advise the Senator from Texas if it is not correct if a justice of the Supreme Court who has been in the service of the Supreme Court and in Government service for 15 years can retire at age 65 and retire at full salary, $60,000, and the Chief Justice can retire at full salary, $62,500, the net result of this amendment would be to impose more restrictive limits in the retirement plans of private enterprise than are imposed on pension plans for retiring public officials?

Mr. CURTIS. I think the Senator has put his finger on something that is very important. Certainly the Government should impose on its own employees that which we impose on nongovernment employees.

If there is a ceiling on salaries for everyone else, there should be a ceiling for the President of the United States. There should be a ceiling for a President's widow. There should be a ceiling for the Justices of the U.S. Supreme Court. I believe their retirement would be beyond the ceiling contained in the Senator's amendment. There should be a ceiling for the members of the Supreme Court.

I thank my distinguished friend, the Senator from Texas, for bringing out that point.

Mr. BENTSEN. Mr. President, would the distinguished Senator from Nebraska yield for another question?

Mr. NELSON. Mr. President, would the Senator yield for the purpose of my offering a correction to my amendment. Mr. Woodworth advises me that the Senator was correct in saying my earlier amendment omitted the feature which relates to covering all employees. This was an unintentional omission.

Mr. BENTSEN. Mr. President, I do not have control of the time.

Mr. CURTIS. Mr. President, I am happy to yield to the Senator for that purpose.

Mr. NELSON. Mr. President, I ask unanimous consent that the text of amendment No. 506 be added at the end of amendment No. 505. That will correct the error of omission which the distinguished Senator from Nebraska pointed out. If these two separate amendments are considered together, what I intended to do will be accomplished.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Wisconsin? The Chair hears none, and it is so ordered.

The amendment, as modified, is as follows:

In title VII, on page 30, line 12, strike "$100,000" and insert "$60,000".

On page 47 line 22, strike "$100,000" and insert "$60,000".

In title VII, on page 60, after line 17, add the following:

"(f) LIMITATION ON DEDUCTION FOR CONTRIBUTIONS ON BEHALF OF CORPORATE EMPLOYEES.—Section 404 (relating to deduction for contributions of an employer to an employees' trust or annuity plan and compensation under a deferred payment plan) is amended by adding at the end thereof the following new subsection:

"'(g) LIMITATION ON DEDUCTION FOR CONTRIBUTIONS ON BEHALF OF CORPORATE EMPLOYEES.—Notwithstanding the provisions of subsection (a), no deduction shall be allowed for a contribution made for or on behalf of a corporate employee to or under a defined benefit plan or a defined contribution plan if the amount of such contribution or if the benefit provided under the plan exceeds the amount specified as an alternative limitation on deduction or benefits for proprietary employees in subsection (e)(4) and section 401(j)(2), whichever is applicable.".

Mr. CURTIS. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. CURTIS. Mr. President, in that event, would it be possible to call for a division and have a separate vote on each of the two parts of the Senator's amendment?

The PRESIDING OFFICER. The Chair will rule that the amendment is still subject to division because it was not asked by the sponsor of the amendment that it be considered en bloc.

Mr. NELSON. Mr. President, a parliamentary inquiry.

Mr. CURTIS. Mr. President, I yield for that purpose.

Mr. NELSON. Mr. President, I wonder about the ruling. Any amendment is divisible if it is a separate issue.

The PRESIDING OFFICER. The Senator is correct.

Mr. NELSON. Mr. President, that is the rule. It is not because this amendment was offered at this stage that it becomes divisible?

The PRESIDING OFFICER. No.

Mr. CURTIS. There may be some here who feel that the larger corporations, some of which were involved in the illustrations or examples cited by the distinguished mover of the amendment, should have a ceiling, but they are not ready to disturb the ceiling for the small corporations.

I do not know at this time whether I will call for a division of the amendment. However, there are two propositions to be considered here.

Mr. BENTSEN. Mr. President, would the Senator from Nebraska yield?

Mr. CURTIS. I will be happy to yield in a moment.

The PRESIDING OFFICER. The 10 minutes of the Senator have expired.

Mr. CURTIS. Mr. President, I yield myself 5 additional minutes.

The PRESIDING OFFICER. The Senator from Nebraska is recognized for 5 additional minutes.

Mr. CURTIS. Mr. President, I want the record to show clearly here that I am not speaking here in favor of any high, unreasonable retirement. I do not think that is the issue. I think that some of the retirement benefits are too high.

I think the issue is whether the Congress should undertake to put a ceiling on compensation. A retirement benefit is compensation.

If we are to assume that all money belongs to the Government, and therefore if something becomes tax-deductible it thus becomes a subsidized operation, if that is our premise, then we must assume that all income to a corporation belongs to the Government, and if the corporation pays out something in a salary and gets a tax deduction, that is a subsidized salary.

Maybe we should have a ceiling on compensation. Conceivably, I could vote for it after there has been a public hearing on the subject, and we go into it and have a formula presented here that would meet the situation and do justice. But there has been no hearings on whether the Government should limit compensation.

I yield to the distinguished Senator from Texas.

Mr. BENTSEN. Mr. President, I say to the distinguished Senator from Nebraska that I share his concern and that of the distinguished Senator from Wisconsin about excessive pensions with a tax-deductible feature; but I also have some concern that if we impose limits on the retirement benefits of company executives that are too restrictive we would encourage these executives to reduce retirement benefits for all employees down the line. We might thus have a rippling effect, and hurt the very people we do not want to hurt, the employees.

I think that is a matter of concern that we ought to carefully consider because the average, low-income man who works as an employee of a corporation is the very person who most needs an adequate retirement benefit and who we are trying to protect with comprehensive pension legislation.

Mr. CURTIS. I thank the distinguished Senator for his contribution. I believe also we should go into this with our eyes open. If we can place a ceiling on compensation for executives, we can place a ceiling on compensation for workers. It is entirely possible. Public sentiment might be mobilized in certain instances where the demands of a particular group of workers were considered excessive, unfair to consumers, and unsound public policy.

Are we to move in and regulate compensation by law? In raising that question, I repeat, I am concerned about the principle involved, and I am not speaking up in defense of anyone's retirement compensation that is excessive, unreasonable, or out of line with what it ought to be. I am raising some questions about what the right approach should be.

The PRESIDING OFFICER. The Senator's 5 minutes have expired.

Mr. CURTIS. I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. NELSON. Doesn't the present wage and price control program limit compensation? Mr. President, the distinguished Senator from Nebraska makes the argument that setting a limit on pensions somehow is not defensible. I would just like to point out, as the Senator

well knows, that we are not setting a limit on pensions. General Motors or anyone else can pay pensions of $100,000, $200,000, or $300,000. What we are setting a limit on is the annual pension that may be paid for from a pension fund funded by tax deductible dollars. If employers want to pay more, let them just pay the taxes on their net income.

I am a little bit puzzled by the argument, because the Senator himself, in the Finance Committee, voted for exactly the same principle, except at the level of $75,000. The Finance Committee adopted a principle precisely the same as in this amendment, and the Senator from Nebraska supported it. The only difference was in the total amount of the limitation.

Mr. CURTIS. Mr. President, will the Senator yield?

Mr. NELSON. Yes, on the Senator's own time.

Mr. CURTIS. I introduced a comprehensive bill on this entire subject. It contained no limitations. The committee subsequently fixed a $7,500 limitation on small corporations, which I did not favor. The affirmative vote that I cast was to liberalize what the committee had already done.

Mr. NELSON. In any event, exactly the same principle is in the Finance Committee bill, setting a limitation on the amount of pension that can be paid from a pension fund funded by tax-deductible dollars. Furthermore the distinguished Senator from Nebraska makes the argument that the source provision should apply to Government employees as well as private employees.

So far as Congress is concerned and all Federal employees, except Federal judges whom Congress as a matter of policy and for reasons they thought sufficient treated differently, there is a maximum on pensions that can be paid to Federal employees. That maximum for Members of Congress is $34,000. You can have a pension of a maximum of 80 percent of $42,500 after some 32 or 33 years of service. That is $11,000 less than the $45,000 limitation in this amendment.

So, in order to meet the argument of the distinguished Senator from Nebraska we would have to take my amendment and bring it down to $34,000. I also might point out the Federal pension plan is a contributory plan with Federal employees making contribution to their own pension with after-tax dollars.

The distinguished Senator rests most of his argument on the ground that we should not set a limit on salaries. I think it is a very fine argument, but it has nothing to do with this amendment, because we are not setting any limits on salaries. We are just simply saying we are not going to ask the working man, who is making $7,000, $9,000, or $12,000 a year, to make up the billions of dollars of deficit in the Treasury through supporting pensions of $137,000 a year. It is as simple as that.

You cannot have any system that is perfect, but I want to see anyone justify taxing a man or a woman who makes $7,000, $8,000, or $9,000 a year in order to pay someone else a pension of $137,000 a year. That is absolutely unconscionable, and I do not think it could be defended in any forum in America. The only reason that this injustice exists in our tax law is because it is so complicated that few ever figure out what is done, but the people are going to find out if I can get my voice heard, because I do not think anyone in his heart and soul can defend it. How much more do you want?

The Presiding Officer. Who yields time?

Mr. Long. Mr. President, I ask the Senator from Nebraska, may I have a moment to speak?

Mr. Curtis. I am very happy to yield my chairman some time. But, Mr. President, I think this is a rather important subject and I wonder whether, following the remarks of my chairman, we could have a quorum call with the time not to be charged to either side.

Mr. Robert C. Byrd. Mr. President, I am going to have to object to quorum calls today not being charged to either side. We did that all day yesterday. Over 4 hours remain on the bill. That time can be used.

Mr. Curtis. Mr. President, I should like to plead a little bit with our distinguished leader. It is not a question of how many quorum calls we have or how much time we consume but the question of whether we carry on the legislative process. I rather think that Senators would like to know what they are voting on and would like to make some little contribution to this debate.

Mr. Robert C. Byrd. The distinguished Senator can charge time against the bill. He has ample time if he wishes a quorum call.

Mr. Curtis. Mr. President, I yield to my chairman such time as he desires.

Mr. Long. Mr. President, the amendment offered by the Senator from Wisconsin is offered on the basis of tax equity and uniformity. As a practical matter, if we are talking about raising revenue from those who are able to pay in order to reduce the tax burden on the rank and file taxpayers, it is worth noting that, in any event, whether we take the Nelson amendment or the committee amendment, we are not going to raise enough money to wad a shotgun in terms of fiscal support of the Government.

If we want to raise a large amount of money by reducing the deductibilty or the nontaxability of the amounts deferred for pension funds, one would take the amendment which the committee agreed to in the first instance, which would reduce the amount that could be set aside and deducted for pensions for people in incorporated law practices, incorporated medical practices, owner-manager corporations, to about $7,500 a year. That is what the committee proposed in the first instance. Why is it not here now? That would raise about $125 million, which would partially offset the increased tax deferment proposed for self-employed people under the H.R. 10 type of retirement plan. One provision would raise revenue to partially offset the other.

But why did not the committee bring out the $7,500 limitation for proprietary employees of corporations? The reason we did not is that we heard so much protest and so much complaint from across the land, and so much expression of dissatisfaction addressed to Congress, including the committee, that we met a second time and decided we would not limit it to $7,500 for the reason that we did not think we could sustain it on the floor of the Senate.

So far as I am concerned, that was a rather pragmatic decision, to say that if we could limit the tax deferment to $7,500, let us see on what basis we could put a lid on it.

The provision regarding proprietary employees of corporations that we now bring to the Senate will not raise any great amount of

money—just about $10 million—but we do limit the deferment to 75 percent of the first $100,000 of compensation, which means that a person could defer enough income to put into his pension plan to have a retirement of $75,000 a year.

One can say, "Well, that is a very liberal amount to let a person set aside." And it is. But, one should keep in mind that the alternative under present law would let him set aside $1 million a year toward his own retirement if he owned his own corporation, which offends us all, in the sense of tax equity and social and economic justice. So what the committee proposed was simply to place a limitation on the amount that could be set aside on the owner-manager corporations.

One could say, "Why do we not do the same thing with regard to large corporations?" The answer is that that is not where the problem exists. If the president of General Motors, say, wanted to set aside $1 million a year for a pension fund for himself, I am sure that many shareholders would file a shareholders' lawsuit on the basis that that was an excessive compensation for that officer.

In addition, he would also have to provide a similar retirement benefit for the other salaried employees, all of which would have to be approved by the board of directors and the shareholders at their meetings and they would have to pass on it.

In addition, when labor went to negotiate the next contract, they would insist on their retirement plan being brought in line for their wage employees to conform to what had been made available to the salaried employees.

So that, as a practical matter, it is conceivable that large corporations could do something like that. But, it cannot be done as a practical matter. The facts of life about large corporations do not permit any executive to set aside the entire earnings of a corporation in a retirement plan for himself. But where one owns 100 percent of the stock in a corporation, he can take all the earnings of his corporation and put them aside in a pension plan for himself and there is no shareholder to sue him.

So the abuses that could occur among owner-manager type corporations, incorporated law practices, and incorporated medical practices—things of that sort—caused the Finance Committee to say that there should be a limitation placed on it.

As I say, there was a tremendous amount of protest against what the Finance Committee had orginally recommended, which we thought was equitable and would put the owner-manager type of corporations and incorporated law practices and incorporated medical practices on the same basis as self-employed lawyers and self-employed doctors. We were convinced that we could not sustain that position so we recommended the position that we thought we could sustain.

I have since been informed that the Association of General Contractors supports that recommendation of the committee. By no means all of the members of the association support it. Some have a more generous retirement plan which they will have to forego, or pay taxes on part of that money set aside for retirement, but they are willing to support the recommendation that we have here. That is about as good a cross section of small business as one can look to, generally speaking,

the general contractors of the country. I suppose there will be a few who will complain about it—not a great number—very few.

Now what the Senator from Wisconsin wants to do is to go beyond what the committee recommended and reduce the amount that could be provided under "regular" corporate pension plans. I think that would serve very little purpose. The amount of revenue that would be raised is small, so that it would seem to me that if we are going to try to restrict contributions and benefits more than what the committee did, we should reserve that for some future date and consider to go back to what the committee recommended to begin with—that is, that one could not set aside more than $7,500 a year and make it tax exempt. But what the Senator recommends would raise little revenue. It would not achieve the objective already there, which is that there should be a lid on what can be set aside. It is a mere gesture in the direction that we might want to go at some future date when we get a substantial reduction down to perhaps $7,500, which the committee recommended to begin with.

So. I say, very little would be achieved by the amendment. There is broad support now for the position the committee recommended and I hope very much that the committee position will be supported by the Senate.

Therefore, Mr. President, regrettably, I say that I do not feel I can support the amendment.

The Presiding Officer (Mr. Hollings). Who yields time?

Mr. Curtis. Mr. President, may I inquire how much time I have left on the amendment?

The Presiding Officer. Five minutes remain.

Mr. Curtis. I reserve that time.

The Presiding Officer. Who yields time?

Mr. Taft. Mr. President, will the Senator from Nebraska yield me 1 minute?

Mr. Curtis. I yield 2 minutes to the Senator from Ohio.

Mr. Taft. I thank the Senator.

Mr. President, I just want to raise a question for the purpose of clarification.

If we limit the permitted contributions to $45,000 for a top paid member of the plan, do we not limit the percentage of compensation that can be paid to all other members of the plan as well? Therefore, are we not in effect cutting back on the level of participation of all members of the plan? The Internal Revenue regulations as I understand, call for a like percentage contribution on all participants in the plan.

Mr. Nelson. The regulation is that you cannot discriminate against the highly paid employee. You may discriminate in favor of the low paid one.

However, as to the precise point raised, if an executive desires, under my amendment, to achieve a pension of $45,000, he can have a pension that is 75 percent of $60,000. In achieving that, he has to set aside a higher percentage for lower paid employees than if that percentage were applied against $100,000. It takes 15 percent of $100,000 to get $15,000. It takes 30 percent of $50,000 to achieve it. So if he is going

to give the same percentage to everybody, the ceiling I have put on here is beneficial to the low paid employee.

The Presiding Officer. The 2 minutes of the Senator have expired.

Mr. Curtis. Mr. President, I yield 3 minutes on the amendment and 2 minutes on the bill, a total of 5 minutes, to the distinguished minority leader, the Senator from Pennsylvania (Mr. Scott).

Mr. Scott of Pennsylvania. Mr. President, the difficulty with establishing categories, aside from being discriminatory, and the difficulty of establishing limits is the same, and that is a diversity of treatment of Americans, depending on the degree to which they have been able to climb the economic ladder and the degree to which they have been able to establish their executive competence.

For example, I am sure that any attempt here now to limit pensions of wage earners would immediately run into collective bargaining difficulties. Yet, it is argued that we can limit the pensions of one group of wage earners, but the limitations are different on the pension benefits of another group. Congress generally abhors discriminatory legislation, and I think it should be so here.

For example, in the search for talent in this country, people who are looking for executives engage in a highly competitive examination, and they also make competitive offers to the most talented executives in the country. Take the ballbearing industry, where many of us are concerned with imports from abroad, which are a very considerable percentage—some 34 percent. I can conceive of the search for an executive of a ballbearing company who is best able to cope with this whole import problem. What is he trying to do? He is trying to make ballbearings in America. He is trying to employ as many people as possible; 17,000 people have lost their jobs in this industry already, including the States of New Hampshire, South Carolina, New York, and Pennsylvania, and we are meeting on it. Other States are involved.

In this search for talent, these ballbearing companies need the best executive they can find. Some are small companies, some are large. If they cannot offer him a competitive pension, they will not be successful in obtaining his services, because wages today in executive areas are not the whole consideration, as any employee will point out. It is the fringe benefits that are negotiated for in collective bargaining. It is the same with an executive. He negotiates for the fringe benefits. If we are going to say here that he cannot have the fringe benefits beyond a limitation, what are we saying to him? We are saying, "Don't take the job." I will tell Senators why.

I saw some statistics today on our own salaries. For anyone who earned $40,000 3 or 4 years ago, it is necessary to earn $52,500 today to stay even. Yet, there are Members of Congress who are extremely delicate about the question of increasing their own salaries, even though they have suffered approximately a $12,500 disadvantage in the economic race, because salaries have not been raised for 5½ years, and many people are afraid that the public will invoke all sorts of sanctions on them. So we go along here at the salary of $42,500, and that means that $53,000 or $54,000 is what we ought to have to stay even with where we were 3 or 4 years ago.

The same thing is going through the mind of the executive. If his pension is limited now in 1973 dollars, in 1977 and 1980 and 1983 he is going to have a great deal less in constant dollars. That is the trouble with dollar limitations of this kind. It should be left to the competitive operations of the market. Therefore I am opposed to the amendment.

The PRESIDING OFFICER. The 5 minutes of the Senator have expired. Who yields time?

Mr. NELSON. Mr. President, how much time does my side have remaining?

The PRESIDING OFFICER. Ten minutes on the amendment.

Mr. NELSON. How much time remains on the bill?

The PRESIDING OFFICER. The Senator from Wisconsin has 67 minutes on the bill.

Mr. NELSON. Mr. President, I should like to make a brief response to the comments of the distinguished minority leader.

He objects to setting limits on pensions to be paid, and he objects to discrimination. The bill before the Senate, which was reported by the Finance Committee, sets a limit. The question is, What should the limit be? There are some, of course, who do not want any limit. But the Finance Committee bill says that the maximum compensation shall be 75 percent of the highest 3 years of earnings, not to exceed 75 percent of $100,000—therefore, a maximum of $75,000 a year. My amendment simply says that the maximum shall be $45,000 a year. So the principle in both bills is exactly the same.

On the question of discrimination, the Finance Committee bill does clearly discriminate. The Finance Committee bill sets the $75,000 limitation on pensions that can be paid, applicable to proprietary corporations, professional corporations, closely held corporations, but does not set that limit on General Motors or other ordinary corporations.

So, in one respect both measures are the same in the sense that they both set a limitation throughout a different level. This amendment goes one step further and eliminates the discrimination in the bill between the various types of corporations.

I am really astonished to hear the arguments here that we have to allow unlimited pensions to be paid for out of tax-deductible dollars. There is no limit in this bill on deferred income that can be paid after retirement or on total amount of pension.

If they want to pay a pension of $100,000 or $200,000, they can do it. But they can only pay the first $45,000 out of a pension plan supported by tax-deductible dollars. That is what this is all about. Who in this country is getting this kind of break? The most affluent, the richest, the most privileged people are those getting the $100,000 pensions. Should middle- and low-income people pay taxes to support a deficit in the Federal budget caused by high pensions paid with tax deductible dollars? I think not.

This is the same old argument we have been hearing for years. Back in the thirties they talked about the trickle down theory of economics. The trickle down theory was the concept that if the privileged people in society are provided with great abundance the surplus crumbs will fall off the table and trickle down to the little

people who will be greatly benefited thereby. I heard that discussed time and time again. I heard the theory explained at a picnic at Balsam Lake, Wis., back in the depression when the speaker discussed the theory to a large audience of farmers. He said the trickle down theory argues that "If you want to make the sparrows healthy and happy, feed the horses more oats."

Mr. CURTIS. Mr. President, I yield 5 minutes to the Senator from Pennsylvania.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SCOTT of Pennsylvania. Mr. President, at some time in every debate we get into the trickle-down theory and we shed tears, crocodile tears over the damage we are doing to the poor people while we visibly conceal the protection we are affording ourselves. For example, the $45,000 limitation—75 percent. Every Member of Congress is entitled to 80 percent but we say to the people in the country that Congress only gets 75 percent.

Mr. NELSON. Mr. President, will the Senator yield?

Mr. SCOTT of Pennsylvania. I know what the Senator is going to say. We make taxpaying contributions, and I agree, and we are worth every cent, I agree. On the trickle-down theory the Senator is worried about, the Chief Justice gets a pension of $65,000, the Justices get $60,000, the President gets $60,000, and the President's widow gets $20,000. Members of Congress, if they stay here long enough through the courtesy of their constituents can get 80 percent of $42,500, which is $34,000.

Why does the Senator not make his proposal for $30,000 and penalize every Member of Congress $4,000. Then I will believe in the trickle-down theory.

The PRESIDING OFFICER. Who yields time?

Mr. NELSON. I yield myself whatever time is necessary.

The PRESIDING OFFICER. The Senator from Wisconsin is recognized.

Mr. NELSON. Mr. President, it is a very interesting argument, but when the distinguished Senator gets to the end, what he is saying is that Congress is limited to a maximum of $34,000 even if a Member of Congress stays here for 40 years. My amendment allows $11,000 more to be paid in the private pension field than the maximum in Federal pensions.

I think this amendment is very generous. What this amendment will allow is a maximum pension of $45,000, which is $11,000 more than the maximum authorized for Federal employees except for the President and the Federal court.

Another factor I think is overlooked here is that one can start a pension plan at age 55 and fully fund it in 10 years to achieve a maximum of $45,000 per year in pension benefits. In other words you can put enough money, tax-deductible dollars, into that pension plan annually so that in 10 years, just 10 years, you can have a retirement pension of $45,000 a year. That is a sufficient amount to fund with the free dollars.

So we are saying to the corporate executive, "You can take out of your corporation, off the top, tax deductible dollars in 10 years, enough money to create a fund of about $500,000, all tax free so you

can pay yourself a benefit of $45,000 a year." Is that hard in any way? I should think not.

If he wants to pay himself $100,000 let him take it out after the corporation has paid the taxes. That is what the argument is about. How far are we going to go? We agreed on a limit. It is in the bill. This is simply a lower more justifiable limit.

Mr. SCOTT of Pennsylvania. Mr. President, will the Senator yield to me for 2 minutes?

Mr. CURTIS. I yield.

Mr. SCOTT of Pennsylvania. Mr. President, the Senate is the greatest magic show in the world. We ought to charge admission because of what we are engaged in here is this act of prestidigitation—now you see it, now you do not. I expect to see my distinguished friend from Wisconsin pull more rabbits out of the hat, more canaries out of his pocket, and more silver coins out of the hair of his colleagues, because what his amendment proposes to do, it does not do, and the reason his amendment does not do it is simply because he forces those people who have to arrange the pensions to go the deferred payment or deferred income system, and it simply eliminates the pension plans of many people throughout the country. By the Senator's own admission this can be done any way but it would have to be done in deferred payments.

What we are trying to do is to bring about a workable system in which everyone can be enveloped who wishes to be in the system. Just as we Senators sit here, fat and high on the hog, enjoying the pension system, at the same time we would force these people into the deferred plan. It is magic; it is magic; it is red, white, and blue pinwheels; but it does not change what would happen in the long run except to force people into a different way of doing it.

Mr. TAFT. Mr. President, will the Senator yield to me for 2 minutes?

Mr. CURTIS. I yield.

The PRESIDING OFFICER. The Senator from Ohio is recognized.

Mr. TAFT. Mr. President, I thank the Senator for yielding. I wish to comment on the reply of the Senator from Wisconsin a moment ago to the question I asked about percentages limitations. His reply was interesting and it was probably accurate under the current Internal Revenue regulations.

Mr. President, only one-half to one-third of the employees in this country today are covered by private pension plans, and the creation of such plans is entirely voluntary. Management decides whether to set up a plan.

If we add a provision which automatically reduces the compensation to the executives who set up the plan, I believe the practical effect will be to reduce benefits to all employees and discourage creation of new plans.

The percentage of compensation allowed to all should be the same. That is one of the incentives of such a plan. We are trying to increase the number of pension plans in this country. This amendment would decrease new plans being created and would decrease the possibility of benefits being increased under present plans.

Mr. CURTIS. Mr. President, I yield myself 5 minutes.

There are several observations I wish to make. Again I repeat that I am not here to defend excessively high retirement or unreasonable retirement income. I want to direct the attention of the Senate to what this amendment does and what it does not do, as well as the principle involved. A retirement benefit is part of the employee's compensation, and so this is a decision that involves placing of a ceiling on compensation.

Salaries and wages are tax deductible, just as a payment into the retirement fund is to the taxpayer. Both are compensation. So we embark upon fixing ceilings on compensation. It would also fix a limit below what the Government pays. It would affect the small corporations. The distinguished Senator from Wisconsin has not cited a single abuse. The list from which he read was of the larger corporations.

Also, some persons might gather from this argument that the head of a company can just go in and fix himself a retirement and get it all tax free, and that is that. Corporation management cannot do it unless they provide the same percentage for all of their employees covered under the plan.

There is only one exception. An allowance can be made for age in defined benefit pension plans. If there are older people in the company who worked long before it had a retirement system, more money has to be paid in than it has to be for the younger persons.

Even if one believed that we should embark on a system of limiting compensation, let us do it after a hearing. The distinguished Senator from Wisconsin is a member of the Committee on Labor and Public Welfare. They brought a bill in here. It did not have one line in it which made a limit. The Labor and Public Welfare Committee did not have a single witness to recommend such a limit. But the Senator proposes it. Somebody should hold a hearing.

Here is another thing: This amendment has already been doctored up once. It was first offered against the so-called smaller corporations, the professional and proprietary corporations. No abuses were cited there. They may exist; I do not know. It was amended then to include the others. Well, it needs a little more doctoring, aside from bringing Government pensions down.

The law business is pretty good in some places. I know of a referee in bankruptcy who had to beg around and look for some people, even though he was offering $30,000 to young lawyers starting out in that specialty. It is not unreasonable to expect that a young lawyer, aged 25, might establish an H.R. 10 system for himself and put in $7,500 a year. If he did that at 25 years of age and kept it up until age 65, do Senators realize he would accumulate $1,160,700? They would provide him an annuity of about $120,000 a year.

I am not here suggesting what a pension shall be. I am here suggesting that if we adopted the distinguished Senator's amendment, it would end up placing a ceiling on some people's retirement—less than 50 percent of what others could provide.

What does that mean? It means that if we are going to undertake this business, we ought to have a hearing. We ought to have something drawn that would be the result of the necessary legal research. The affected parties ought to be given a chance to present their case.

Maybe there is something to the theory expounded by the distinguished Senator from Pennsylvania (Mr. Scott), our minority leader, that we should call witnesses and ask them.

The Presiding Officer. The Senator's 5 minutes have expired.

Mr. Curtis. Mr. President, I yield the floor.

Mr. Nelson. Mr. President, how much time have I remaining on the amendment?

The Presiding Officer. The Senator has 3 minutes remaining.

Mr. Nelson. I yield myself 5 minutes—3 minutes on the amendment and 2 minutes on the bill.

Mr. President, on the argument made by the Senator from Nebraska on the question of discrimination—that is to say, that no employer in this pension field can grab a big bundle for himself and discriminate against his employees—I think the Senator should know that under the law a doctor can contract for secretarial and other services and avoid employing many employees.

Mr. Curtis. Mr. President, will the distinguished Senator tell us whether his amendment would cover a doctor practicing individually? It would not.

Mr. Nelson. He can incorporate.

Mr. Curtis. But if he chooses not to incorporate, he will not be touched by the Senator's amendment.

Mr. Nelson. The Senator is absolutely correct; there is no argument about that. He is limited to $7,500 a year.

Mr. Curtis. He can build up a $120,000 pension payment under that limitation.

Mr. Nelson. Yes, but to do that he must set aside $7,500 for something like 40 years. In the more normal period of 25 years for building up a pension at $7,500, he is able to retire at age 65 at about $41,000 a year.

Mr. Curtis. Between age 25 and age 65, he can have $125,000.

Mr. Nelson. That may well be.

Mr. Curtis. And the Senator's amendment would not touch him.

Mr. Nelson. No; I simply point out that he can incorporate; he can contract for the service; he can have even one employee or none. He can pay a very high salary, set aside 50 percent. He could have an income of $200,000. He can set aside $100,000, tax free.

He can then have a stenographer to whom he pays $9,000 and set aside 50 percent, $4,500, a magnificent tax loophole.

All I am trying to do is to provide some equitable limitation on what the taxpayer should have to pay to support tax plans for the affluent.

Mr. President, I assume that my time on the amendment has expired.

The Presiding Officer. It has.

Mr. Nelson. I am prepared to yield back the remainder of my time and to vote.

The Presiding Officer. All time has expired. The question is on agreeing to the amendment of the Senator from Wisconsin, as modified. The yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. Robert C. Byrd. I announce that the Senator from Alaska (Mr. Gravel) and, the Senator from Michigan (Mr. Hart) are necessarily absent.

Mr. Griffin. I announce that the Senator from Utah (Mr. Bennett) is absent on official business.

I also announce that the Senators from Arizona (Mr. Fannin and Mr. Goldwater), the Senator from Wyoming (Mr. Hansen), and the Senator from Ohio (Mr. Saxbe) are necessarily absent.

I further announce that the Senator from Oklahoma (Mr. Bellmon) and the Senator from Kansas (Mr. Pearson) are absent because of illness.

The result was announced—yeas 32, nays 59, as follows:

[No. 395 Leg.]

YEAS—32

Abourezk	Fulbright	Metcalf
Allen	Hartke	Mondale
Bayh	Haskell	Moss
Burdick	Hathaway	Muskie
Byrd, Robert C.	Hughes	Nelson
Case	Humphrey	Pell
Chiles	Kennedy	Proxmire
Church	Mansfield	Stevenson
Clark	McGee	Symington
Eagleton	McGovern	Williams
Ervin	McIntyre	

NAYS—59

Aiken	Fong	Percy
Baker	Griffin	Randolph
Bartlett	Gurney	Ribicoff
Beall	Hatfield	Roth
Bentsen	Helms	Schweiker
Bible	Hollings	Scott, Pa.
Biden	Hruska	Scott, Va.
Brock	Huddleston	Sparkman
Brooke	Inouye	Stafford
Buckley	Jackson	Stennis
Byrd,	Javits	Stevens
Harry F., Jr.	Johnston	Taft
Cannon	Long	Talmadge
Cook	Magnuson	Thurmond
Cotton	Mathias	Tower
Cranston	McClellan	Tunney
Curtis	McClure	Weicker
Dole	Montoya	Young
Domenici	Nunn	
Dominick	Packwood	
Eastland	Pastore	

NOT VOTING—9

Bellmon	Goldwater	Hart
Bennett	Gravel	Pearson
Fannin	Hansen	Saxbe

So Mr. Nelson's amendment, as modified, was rejected.

Mr. Curtis. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. Long. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 506

The Presiding Officer (Mr. Hollings). Under the previous order, the Senator from South Carolina is recognized to call up his amendment.

Mr. Nelson. No, under the previous order the other amendment of the Senator from Wisconsin is the pending business, by unanimous-consent agreement.

Mr. Thurmond. That is correct.

The Presiding Officer. Amendment No. 506 was combined with amendment No. 505 on the vote we just had.

Mr. Nelson. I call up amendment No. 506.

The Presiding Officer. Does the Senator from Wisconsin offer that amendment separately?

Mr. Nelson. Yes.

The Presiding Officer. The clerk will state amendment No. 506.

The assistant legislative clerk proceeded to read the amendment.

Mr. Nelson's amendment (No. 506) is as follows:

In title VII, on page 60, after line 17, add the following:

"(f) Limitation on Deduction for Contributions on Behalf of Corporate Employees.—Section 404 (relating to deduction for contributions of an employer to an employees' trust or annuity plan and compensation under a deferred-payment plan) is amended by adding at the end thereof the following new subsection:

"'(g) Limitation on Deduction for Contributions on Behalf of Corporate Employees.—Notwithstanding the provisions of subsection (a), no deduction shall be allowed for a contribution made for or on behalf of a corporate employee to or under a defined benefit plan or a defined contribution plan if the amount of such contribution or if the benefit provided under the plan exceeds the amount specified as an alternative limitation on deduction or benefits for proprietary employees in subsection (e)(4) and section 401(j)(2), whichever is applicable'.".

Mr. Nelson. I yield to the Senator from Montana.

Mr. Mansfield. Mr. President, I ask unanimous consent that on all rollcalls from now on there be a time limitation of 10 minutes.

The Presiding Officer. Is there objection? The Chair hears none, and it is so ordered.

Mr. Nelson. Mr. President, now that the Senate has done its duty and taken care of the rich and the affluent with the defeat of the last amendment, let us adopt this amendment that at least says you cannot raid the Treasury for any more money than it takes to pay a $75,000 a year pension.

This amendment (No. 506) simply provides that the provision in the Finance Committee bill which says that pensions for closely held corporations and professional corporations are limited to a maximum of 75 percent of the highest 3 years of earnings not to exceed $100,000 average earnings—in other words, the maximum is 75 percent of

$100,000 that can be paid in pensions from funds supported by tax deductible dollars—shall apply to all corporations.

That limitation of $75,000 now applies to professional corporations and to closely held corporations, but it does not apply to any other corporations. So the limit that we place on the small corporations and closely held corporations does not apply to General Motors, Westinghouse. IBM, ITT, or any other major corporation in the country.

If we are going to allow a pension this high, let us set the limit to apply equally across the board. Heaven knows, if the Senate is prepared, as it has just demonstrated, to raid the Treasury and make the little people of this country pay taxes for pensions above $45,000, let us at least limit it to $75,000. That is all this amendment is about.

Mr. Javits. Mr. President, will the Senator yield?

Mr. Nelson. I yield the Senator from New York whatever time he needs.

Mr. Javits. Mr. President, this amendment goes to that part of the bill which is authored by the Committee on Finance rather than that part of the bill which is authored by the Committee on Labor and Public Welfare, which has been the special care of the Senator from New Jersey (Mr. Williams) and myself. Therefore I am not speaking for this one as manager of the bill with the Senator from New Jersey (Mr. Williams) on the side of the bill as it came out of our committee, but I am speaking as an individual Senator. I shall vote for the amendment although I voted against the last one. I lay aside Senator Nelson's heartfelt, I am sure, denunciation of our action allegedly favoring the rich. I consider it no such act whatever. I think that the vote on the last amendment simply shows that we realize it takes two to make an economic system—that is, labor and management; and that we do not want incentive taken away from management any more than we want incentive taken away from labor.

If his argument for the $45,000 should be a valid one, then we should go the way that Franklin D. Roosevelt the elder wanted us to go, that is, to limit all incomes to $25,000 a year, or maybe even less. The average yearly wage of the rank-and-file worker in this country today is something in the area of $12,000. Obviously, that is not done in this society. It certainly has not worked in any other society either. So that I think the Senate acted properly in what it did respecting an artificial roof on everything.

There are many other safeguards in the bill as to equality, nondiscrimination, limitation of tax deductibility, and so forth. But this particular amendment falls in a different category. For the Finance Committee has maturely considered this issue and has decided it is a fair limitation when applied to a given class—to wit, a participant in what is called the proprietary corporations. That has been a loophole in the law as contrasted with the limitation of $75,000 for the individual self-employed person. The Finance Committee, therefore, having come to a considered, factual decision on this issue, I think that the Senator from Wisconsin (Mr. Nelson) is right, that if the fact is it is a good decision for the proprietary corporations, then it is a good decision for other corporations as well.

So I hope that the majority of the Senate, laying aside whatever the Senator from Wisconsin (Mr. Nelson) has said about the rich and the poor, which is hardly calculated to win friends or influence people right now, considering the previous vote, will, nonetheless, look at the substantive objective of the amendment, which is justified and I shall vote for it.

Mr. Long. Mr. President, will the Senator from Nebraska yield me 5 minutes in opposition to the amendment?

Mr. Curtis. I yield to my distinguished chairman such time as he may need.

The Presiding Officer (Mr. Haskell). The Senator from Louisiana is recognized.

Mr. Long. Mr. President, the logic of this amendment is that in view of the fact we have set a limit on incorporated law practices, incorporated medical practices, and small business corporations at $75,000 for pensions for purposes of deductibility and tax deferral, the same thing should apply to General Motors.

So, here is the argument, then.

We say, well now, $75,000 a year for a pension should be as much as a man can defer for his retirement as in the case of an individual practicing law in the corporate form since we have even tighter limits on lawyers practicing law in a partnership. Similarly, we thought there should be some limitation on a doctor who has incorporated his private medical practice, since there are restrictions on doctors practicing outside of a corporation. Such a $75,000 limit is appropriate where the corporation is earning money largely for this man alone, or for a group similarly situated. However, the same limit should not apply to a man running a corporation and directing his activities toward the making of money for 5 million shareholders. In other words, just because a man working largely for himself is limited to a $75,000 pension for tax deferment purposes, the argument is made that same limitation should apply to a man making money for 5 million families in this country.

What kind of sense does that make? None at all. It would seem to me that we should be willing to let a man making money for many millions of people have a little more consideration than someone only making money for himself. Furthermore——

Mr. Pastore. Mr. President, will the Senator from Louisiana yield?

Mr. Long. In a moment.

Now, Mr. President, the Senator from Wisconsin has not cited the first case of abuse. We legislated with regard to the small business corporations, the incorporated law practices, and the incorporated medical practices, because we were familiar with abuses in a number of cases involving these situations. But with regard to the larger corporations, there has not been one case of pension abuse cited.

Mr. President, I hold in my hand a list which is a cross-section—and about the best that could be provided for us by the Treasury Department, because it comes from public sources—and I ask unanimous consent that the list be printed in the Record.

There being no objection, the list was ordered to be printed in the Record, as follows:

SOME COMPARABLE FIGURES FOR HIGHLY COMPENSATED EMPLOYEES IN CORPORATE PENSION PLANS

Corporation and name of officer	Annual compensation	Estimated annual retirement plan benefits	Benefit as percent of compensation
Columbia Broadcasting Corp.:			
Clive J. Davis	$122,885	$59,073	48
Harvey L. Schein	57,500	42,277	74
Dow Chemical Co.:			
Donald K. Ballman	190,120	88,000	46
C. B. Branch	322,247	157,400	49
Carl A. Gerstacker	184,698	94,800	51
Singer Co.:			
Lloyd L. Kelly	106,667	48,908	46
Donald G. Robbins, Jr.	99,792	55,249	55
RCA:			
Anthony L. Conrad	154,167	119,687	77
Charles M. Odorizzi	70,000	44,093	93
Robert L. Werner	132,500	65,345	49
TWA: C. P. Meyer, Jr.	67,800	32,434	48
Tenneco, Inc.: W. E. Scott	173,150	64,135	37
Union Electric Co.:			
Charles J. Dougherty	145,000	66,087	46
W. E. Cornelius	86,250	45,516	53
Loews Corp.: Lester Pollack	70,055	42,952	61
Western Bancorporation: Sherman Hazeltine	88,700	50,724	57
IBM:			
Arthur K. Watson	113,904	50,000	44
Albert L. Williams	100,000	41,250	41
Raytheon Co.: Thomas L. Phillips	231,131	101,391	44
Bell & Howell: Everett F. Wagnor	115,000	45,000	39
Allied Stores Corp.: Theodore Schlesinger	100,000	35,000	35
Abbot Laboratories:			
Charles S. Brown	82,431	36,048	44
George R. Cain	162,404	76,944	47
Edward J. Ledder	146,070	61,068	42
ABC:			
Everett H. Elerick	157,200	41,699	27
Simon B. Siegel	49,948	33,100	66
Average		61,000	50

Source: From SEC filings selected at random.

Mr. LONG. Mr. President, Senators will note that on this list there are such corporations as the Columbia Broadcasting Corp.; RCA; Tenneco, Inc.; Raytheon; Bell & Howell; Allied Stores; Abbot Laboratories; ABC; Dow Chemical; Singer Sewing Machine Co.—it shows that the average pension retirement works out to $61,000, which is below the amount we agreed to that people in the incorporated law practices could provide for themselves.

Mr. PASTORE. Mr. President, will the Senator from Louisiana yield?

Mr. LONG. I yield.

Mr. PASTORE. I think that the Senator overlooks a very important point. It may be true, the chances are that the president of General Motors is working with people who work in factories making automobiles.

But why is it not just as important for Dr. Salk who makes serum that saves human lives?

What is the Senator doing, balancing automobiles against humanity? Doctors serve humanity. There may be another Dr. Salk who will create a serum to cure diseases, just as Dr. Salk created the serum that eradicated polio. Now you say to Dr. Salk, "You do not hire people. It is just you, one individual, with one brain. You are only serving yourself." The fact is that Dr. Salk is serving humanity, yet the Sen-

ator is saying that the president of General Motors deserves this benefit, because he makes automobiles. That just does not make sense.

Mr. LONG. Dr. Salk, of course, is a very exceptional person and certainly has served humanity as few people have. Despite this, as far as his income is concerned, this serves Dr. Salk. Actually, I do not believe that Dr. Salk in his great work was motivated either by income or by a pension.

Mr. PASTORE. But the Senator will agree that he works for all humanity, does he not?

Mr. LONG. Of course, he has been serving humanity, but we are talking about a tax deduction for retirement reserves from the income of that man or any other man.

Mr. President, there are a lot of limitations that apply to large corporations that do not apply to individuals and there are limitations which apply to closely held corporations which do not apply to other corporations.

For example, if a corporate executive sets up a retirement plan which is excessive when viewed in conjunction with his salary any shareholder can take him to court and say that the combination is excessive. In addition, he has to provide the same kind of benefits for other employees so the retirement program is nondiscriminatory. Furthermore, when he goes to negotiate with labor, labor is entitled to take a look at that pension plan and demand the same thing for themselves.

Here is the list I previously referred to. I have placed it in the Record. Take a look at the names of the officers in these corporations. It may be that perhaps we should look into this thing and see if there should be some limitation on the corporate plans, but unless someone will produce one single example of abuse—just one—then I do not think, Mr. President, that we are justified now in legislating across the board with regard to a problem which, at a maximum may deserve further consideration.

Now, the largest proposed retirement allowed anywhere in this list would be for Mr. C. B. Branch of the Dow Chemical Co., at $157,000. The second largest proposed retirement on the list would be Anthony L. Conrad of RCA, at $119,000. But all these plans have been approved by not just the man who set it up for his benefit, but by the directors of the corporation; and every shareholder has a right to challenge it.

I submit, Mr. President, that any abuse in this area has not been demonstrated. Of the proposed pension retirement plans, the average for the executives of large corporations submitted to us by the Treasury Department works out to $61,000, which is less than the $75,000 which we would limit to incorporated law practices, incorporated medical practices, and small business corporations.

Mr. President, I submit that before we raise the taxes of people, it is only fair that those people be accorded a hearing, an opportunity to present their case, to tell their side of the argument, to make suggestions as to what they think would be fair and proper under the circumstances. It would be appropriate for the Treasury to have the opportunity to make its suggestions, as the Treasury would like to do. The Treasury has informed me that the problems that exist in this area are

much greater and deserve much more consideration than those which exist with regard to smaller corporations.

So I hope that this amendment will not be agreed to.

The Presiding Officer. Who yields time?

Mr. Nelson. Mr. President, I am prepared to yield time to anyone who wishes to comment on the bill.

I suggest the absence of a quorum, and I ask unanimous consent that the time be charged equally against each side on the bill.

Mr. Curtis. Mr. President, I object, and the responsibility has to be on the majority leadership. They have declined to let us have quorum calls with the time not to be charged, and I think they are wrong in doing so. Therefore, I am going to object. We have very little time.

Mr. Robert C. Byrd. Mr. President, on behalf of the majority leader, may I say that at the close of yesterday, 4 hours and 20 minutes remained on the bill. That is ample time, it seems to me, to allow for quorum calls. But if the Senator wants to object to an equal division of the time for a quorum, I suggest to the distinguished Senator from Wisconsin that he simply ask for the quorum out of his own time.

Mr. Nelson. That is generous of the Senator. [Laughter.]

Mr. President, I am the one who is being courteous to the distinguished Senator from South Carolina, on the other side of the aisle, and his side objects to the time being charged equally.

Mr. Thurmond. Charge it against my 2 hours.

Mr. Nelson. The distinguished Senator from South Carolina suggests that the time be charged against the remainder of the 2 hours he did not use yesterday.

Mr. President, I suggest the absence of a quorum, and I ask unanimous consent that the time be charged against the remainder of the time on the amendment of the Senator from South Carolina.

The Presiding Officer. Without objection, it is so ordered.

The clerk will call the roll. The time will be charged against the remainder of the time of the Senator from South Carolina (Mr. Thurmond).

The second assistant legislative clerk proceeded to call the roll.

Mr. Robert C. Byrd. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The Presiding Officer. Without objection, it is so ordered.

Retirement Income Security for Employees Act

The Senate continued with the consideration of the bill (S. 4) to strengthen and improve the protections and interests of participants and beneficiaries of employee pension and welfare benefit plans.

Mr. Jackson. Mr. President, I ask unanimous consent that an unprinted amendment which is at the desk may be offered following the amendment or amendments to be offered by the distinguished Senator from South Carolina [Mr. Thurmond].

The Presiding Officer. Without objection, it is so ordered.

Mr. Bartlett. Mr. President, I ask unanimous consent to have printed in the Record a statement by the distinguished Senator from Oklahoma.

The Presiding Officer. Without objection, it is so ordered.

STATEMENT BY SENATOR BELLMON

I would like to commend the Finance Committee and its Chairman, Mr. Long, and the Labor and Public Welfare Committee and its chairman Mr. Williams for the work and effort which they have exerted on behalf of working people across this nation. S. 4 as amended by the Nelson Amendment No. 496 and No. 497 is an extremely fine and detailed piece of legislation which has the potential to begin regulation of private pension funds, whose assets are currently about $160 billion.

While it is becoming increasingly clear that private pensions are necessary to supplement other forms of retirement benefits such as social security and other government pensions, it is also clear that the private pension plans as currently established are burdened with abuses and inadequacies. As presently structured, private pensions have been nothing but a hoax on the working people of America. Workers have contributed funds for many years only to find out that they had no entitlement because they didn't work long enough, because they changed their unions, because they were laid off or changed jobs, because they became disabled before a certain age, because the company they worked for went out of business or merged with another corporation, or because the pension fund terminated after retirement. The reform measures presented in this legislation are aimed at revamping this system.

S. 4 as amended will extend the coverage to many employees not currently covered under a private pension plan. It will strengthen the vesting requirements of private pension plans so that contributing workers will not lose the value of their investments as readily as they do now. Further, it will assure that when people receive private pension benefits these will be substantial in amount and not a mere token payment, as many plans presently provide. Further, dependent widows or widowers rights will be strengthened under this reform. And finally, those who control pension plans will be held to a tighter fiduciary standard than previously existed, thus insuring wise investments in controlled equities and income producing notes and bills. Therefore, this bill will correct the inadequate coverages, the inadequate vesting, the inadequate funding, the loss of pension benefits due to plan terminations, misuse of pension funds, and discrimination against individuals not covered by pension plans. Because S. 4 as amended will rectify this situation, it is a vital and extremely necessary piece of legislation, and I support the efforts of these committees with one reservation.

That reservation involves the so-called "proprietary employee" provisions, listed in Sections 702, 704, and 706 of Amendment No. 496. Lest you believe that these are insignificant provisions, the Treasury has estimated that 90% of all pension profit sharing plans in effect today will be adversely affected if these are approved. The effect of these provisions is to limit the tax deductibility of contributions to private pension plans in the amount of 15% of the employee's income, not to exceed $7,500 per year. Because of this discriminatory nature of this provision and other inadequacies of the provision, I would urge the Senate to support the amendment of the distinguished Senator from South Carolina, Mr. Thurmond, which would delete all reference to the proprietary employee concept and which would impose the same contribution limitations for all employees of corporations, whether large or small.

As presently structured, this provision of the bill discriminates against small, closely held corporations in favor of large corporations which have no vesting limitation. It discriminates unreasonably against employees and particularly older employees of small corporations. Actuarially, it prevents older persons from funding adequate retirement plans, because in the early years of establishing a business, owners must plow back earnings into the business and are only able later in life to invest in a retirement plan. So older owner managers of corporations will not be able to build up an adequate retirement plan in a limited number of years with the limitation of this provision.

Further, existing owners of small corporations will be discouraged from offering an ownership position to key employees with already accrued retirement entitlement, and such employees will refrain from seeking the same.

The provision as currently structured encourages the assimilation by big corporations of small corporations, where owners do not desire to lose their retirement benefits.

Currently this provision discriminates in favor of unincorporated businesses over small corporations, by permitting larger contributions for self-employed persons than for the owner-employee of a business which is identical in all ways except that it is unincorporated. Therefore, because of this patently unfair discrimination and unequal treatment, I would urge the Senate to adopt Mr. Thurmond's amendment and delete the proprietary employee provisions of S. 4 as amended.

Mr. Robert C. Byrd. Mr. President, I suggest the absence of a quorum and I ask unanimous consent that the time be charged against all sides equally.

Mr. Curtis. I object.

The Presiding Officer. Objection is heard. The time will run equally against both sides unless time is otherwise yielded.

Mr. Nelson. Mr. President, I did not hear the request.

The Presiding Officer. The Senator from Nebraska objected to the quorum call being charged equally against both sides. The objection was heard and the Chair stated that unless someone yielded time the quorum call time would be charged equally against both sides.

Mr. Nelson. Mr. President, the Senator from Wisconsin asks that the time be charged against the amendment of the Senator from South Carolina. That unanimous consent request was agreed to.

The Presiding Officer. That was done prior to the quorum call. The Senator from West Virginia asked for the suspension of the quorum call.

Mr. Long. Mr. President, a parliamentary inquiry.

The Presiding Officer. The Senator will state it.

Mr. Long. Mr. President, can time on the Thurmond amendment which is not pending be used for time on the amendment of someone else?

The Presiding Officer. By unanimous consent it may.

Mr. Long. Well, I want to enter my objection to using time on the Thurmond amendment or any other amendment. In the event that request is made again I hope the leadership will protect me if I am not in the Chamber. If we provide 2 hours on a particular amendment, that time should be used on that amendment. I am willing for time on the bill to be used to debate an amendment but I think this could get completely out of hand.

Mr. Robert C. Byrd. The Senator is correct. I have stated repeatedly that there is ample time on the bill for quorum calls, and I hope the distinguished Senator from Nebraska will not object to charging quorums to time on the bill.

Mr. Curtis. Mr. President, I yield myself 1 minute.

The Presiding Officer. The Senator from Nebraska is recognized.

Mr. Curtis. Mr. President it seems as though we took too much time to confer yesterday. Now, one of the amendments is 275 pages and the other is almost 100 pages long.

One amendment was 227 pages long. The other was 71 pages long. The record shows that these were not available until after we started consideration of the bill yesterday morning.

Of course, there had to be a slow-up. None of us had ever read it, and the normal course of procedure today seems to be objected to on the ground that we took time out yesterday.

The Presiding Officer. The time of the Senator has expired.

Mr. Curtis. I yield myself 1 additional minute.

If we are asked to enact 300 pages that the human eye has never seen, and we take time out to read it, and it displeases my distinguished friend from West Virginia, I hope that he is in the minority.

Mr. Robert C. Byrd. Mr. President, on behalf of the Senator from Wisconsin, I yield myself 1 minute on the bill.

It does not displease the Senator from West Virginia. I am sorry the distinguished Senator from Nebraska is displeased. All day yesterday we had quorum calls and did not charge the time to either side. The leadership did not have any objection to that. It acceded to the request of the distinguished Senator from Nebraska yesterday that we go over until today, that we not complete action on the bill on yesterday. The leadership assured the Senator from Nebraska that the bill would not be complete on yesterday, that the Senator would have time overnight to read printed copies of the bill. So the leadership did not object yesterday to the time not being charged to either side.

As I indicated to my distinguished friend, there is ample time on the bill to which quorums can be charged. If we get to the end of the day and he needs more time, I am sure the leadership will try to accommodate him.

Mr. Curtis. I have no objection to what the Senator did yesterday; it is the fact that the Senator reversed his position that is not in the public interest.

Mr. Robert C. Byrd. Occasionally we have to reverse ourselves in the interest of the country, in the interest of the Senate, and in the interest of expediting the business of the Senate.

The Presiding Officer. Who yields time? Since time is not yielded, it will run equally against both sides.

Mr. Robert C. Byrd. Mr. President, I ask unanimous consent that the distinguished Senator from Indiana (Mr. Hartke) may speak for not to exceed 30 minutes at this time, without the time being charged against either side on the bill. This will give the proponents and opponents of the amendment time to work out their differences, without the time being charged to anyone.

The Presiding Officer. Is there objection? Without objection, it is so ordered.

Mr. Hartke. Mr. President, I ask unanimous consent that this statement appear in context in continuity, even though it may be interrupted for other actions.

The Presiding Officer. Without objection, it is so ordered.

PENSION REFORM: THE TIME IS NOW

Mr. Hartke. Mr. President, for nearly a decade I have called upon Congress to enact meaningful pension reform. At stake is the welfare of millions of American workers who have invested their lives to make this country strong. They deserve to know that their work will not have been in vain and that their retirement years will not be ones of desperation and despair.

I. THE DEMAND FOR PENSION REFORM

The American people know that private pensions need reform. They know that they cannot get by on social security benefits which are their mainstay. They know that more than half the working people in the country do not have any type of private pension plan coverage whatsoever. They know that the overwhelming majority of plan participants will not obtain benefits for their plans. They know that it takes too long to qualify for benefits that the majority of working men and women, that nonunion employees, especially white-collar and management people can now be fired with impunity to defeat their pension eligibility and do not have a chance to qualify. That at best only one job rather than their lifetime of work pays off in a pension, that even vested rights may be hollow for lack of plan funds: that widows seldom get pension benefits, that inflation destroys the value of benefits, and that the retired and widows are the people most ravaged by inflation.

They know this because they live it. The people of South Bend, Ind., lived through the tragedy of the Studebaker shutdown, and that occurred under one of the best plans in the United States. People all over the country have lived through plant shutdowns, departmental discontinuances, lay-offs that are permanent, pension plans with insufficient funds, firings shortly before pension eligibility. And they found out that these were not just freak failures—they are built into the system. They learned that in June 1971 from CBS's "Sixty Minutes"; in September 1972 from NBC's award-winning report "Pensions—the Broken Promise"; in March 1973 from PBC's special; from immeasururable syndicated and regional newspaper stories"; from Nader's best-selling book "You and Your Pension"; from national columnists like Sylvia Porter. The people know and they are looking to Congress for a remedy. They will hold us accountable for making private pensions work fairly to provide the families of this country with the supplement to social security that all need. And the people are beginning to hear that what has been served up as pension reform is inadequate. Read William V. Shannon's "Pension Pretense" of September 6, 1973—which I put in the Record on September 10. He said of the Finance Committee and Labor Committee bills that were combined—after a fashion—to make the bill now before the Senate:

> There is only one thing wrong with these reform bills. Neither of them does much reforming.

Read the "Statement on Pension Legislation" of September 12—to be found in the Record of September 13—issued by some of the Nation's leading experts on labor relations, economists, and income maintenance. Former Secretary of HEW, Wilbur Cohen, joined in the statement which details the urgent needs of pension reform but concluded that—

> The Williams-Javits bill, the Senate Finance Committee bill, and the Dent bill—all fall short of rectifying these (plan) shortcomings and thereby fall short of the needed reforms.

Others who joined in this statement include Dr. Juanita Kreps, a distinguished economist who has specialized in income problems of the elderly; Dr. James Schultz of Brandeis University, a labor economist specializing in projecting the income prospects of the aged; Profs. Merton Bernstein and Father Paul Harbrecht whose books on pension problems in the early 1960's helped draw attention to the need for reform; Dean Charles Schottland, former Commissioner of Social Security, for decades an expert on income maintenance systems; and Harvard economics professor, Otto Eckstein, formerly a member of the Council of Economic Advisers; Dr. James Morgan of the University of Michigan, one of the Nation's leading researchers on income problems; Dr. Henry Aaron of the Brookings Institution, an authority on social insurance; Dr. Harold Sheppard of the Upjohn Institute, who has worked with several Senate committees on problems affecting the elderly. These are disinterested and sober experts who warn that the measures before us fall short of the need of the working people of the country.

II. THE FATAL DEFECT—FEW WILL OBTAIN PENSIONS

A MAJORITY NOT COVERED BY PLANS

Many aspects of pension plans have been oversold. In the early 1960's both private and government sources "assumed" that 20 to 23 million working people had plan coverage. Each year the figure got bigger—as if to say that no plans failed, as if no one retired, as if no one was separated from plans—although all of these things did happen. The figures creeped up and up until recently the figure of 35 million came into common use. At least one pension student constantly questioned these data, pointing out that a 1969 Labor Department sampling of plans under the Welfare and Pension Plan Disclosure Act found little more than 19 million—not 33 million, as had been reported—participants. Only this year did the inflation of plan coverage obtain official recognition. The Treasury Department's interim report on its study of pension plan termination reported—in a footnote—that pension plans—not including profit-sharing plans—covered 23 million active workers. The Social Security Administration reported no figures but declared that earlier estimates overstated coverage and would have to be reduced.

Mr. President, I hope that the managers of the bill will understand that they are not talking about coverage for people who are ultimately going to get benefits. What they are claiming is that these are people in the pension plans who will ultimately receive little or no return.

The sober truth is that contrary to over a decade of claims, private pension plans cover decidedly less than half of the civilian work force.

This means that at any one time fewer than half of American workers have the opportunity to earn pension credits. In turn, that means that when one loses a pension-covered job, the chances of finding another job with a pension is not very good—which belies the conventional apology that one needs not worry about pension losers—they are just young workers who flit around from job to job and finally

come to rest in a safe pension haven. Actual studies of the fate of Packard and Republic aviation workers indicate that the contrary is true—blue collar workers separated from pension-covered jobs are in all age brackets, that many—a majority at Republic—had fewer than 10 years service there, that older workers have a devil of a time finding and holding new jobs, and that substantial proportions—most in the Packard study—end up with lower pay jobs unlikely to carry pension coverage. The chances of working long enough at more than one company to earn vested credits are greatly reduced by the spottiness of coverage. Small companies especially lack plans even in industries in which plans are common. Even in companies with plans, low pay and part-time workers are frequently not covered, a common fix especially for women.

If private pensions are to do their job—providing a retirement income supplement to social security—for all working people, the first essential is to extend pension plan coverage.

Let me say that there is not one single contention by any proponent of this compromise bill that the bill will in any fashion whatsoever provide inducement to increase the numbers of individuals covered. Quite the contrary is true. The result of this pension bill will be a marked reduction in the number of people covered by any pension plan whatsoever.

My portability clearinghouse amendment would go far to facilitate voluntary extension of coverage—as I shall explain more fully later in this presentation.

This is the remarkable thing about portability. This type of provision is opposed by all major employers. They would like to have indentured slavery; that is, they would like to freeze people into a position where they cannot move from their jobs. That is an attribute of the Japanese pension plan system. Anybody who goes into a particular factory has to stay in that factory for the remainder of his life, because the expense of changing coverage under a pension plan is such that he cannot afford to leave.

Actually, the unions do not want workers to have portability, either. If the worker has portability, the union loses its dues-paying members. So portability will be opposed by the unions and by the leaders of organized labor. I find no fault with this, except that I am just saying this happens to be a fact of life.

Now let me talk for a moment about length of service requirements as hurdles to eligibility.

Private pension plans now are designed to pay only to a minority of their participants—they usually require at least 10 years and often 15 or 20 years of service to qualify for benefits. This results from several basic ideas. One is that an employer is obligated only to long-term employees. The fact of the matter is that when we started discussions in the Finance Committee, every member of the committee said it would be a good idea to force employees to stay with their employers for long periods of time. But that is not American.

In turn this derives from two other notions—that pension plans constitute proper corporate expenditures because they bind employees to the firm. These notions go back 30, 40, 50 years before the World War II and Korean war surge in pension plans.

With a controlled economy, wage and price controls, there is an upsurge in the number of pension plans, because this is one way to avoid a sharp increase in wages themselves. If there are wage controls, it is better to give them a little bit more money as a fringe benefit. One fringe benefit is the opportunity to participate in a pension plan. But we find that only 4 percent, as of this moment, will ever really actually participate in the benefits of those plans.

The post World War II participation was quite different. The mineworkers, autoworkers, and steelworkers pressed for private pension plans because social security was so dreadfully inadequate in the 1940's. That was the major basis for the 1949 steel factfinding decision recommending pension plans in that industry.

This justification for private pension plans—the need to supplement social security—continues even today. The design of pension plans to pay off to a few lucky ones conflicts with that justification. Practically all plans today are so inadequate as to be almost meaningless. Practically all need that supplementation and so pensions should provide it. Indeed, the people who lose pension-covered jobs need social security supplementation more than the lucky ones who stay on the job, whose earnings continue uninterrupted, who have a chance to save, and whose health insurance coverage continues.

And people who lose pension-covered jobs—and that happens to working people at all ages—frequently have difficulty finding new jobs at equal pay and with equal fringes. Studies of the Packard and Republic aviation shutdowns show that most do not get equally good jobs, and many blue-collar workers end up in service jobs where pension coverage is rare. Recent experience in the aerospace industry shows that engineers, chemists, mathematicians, and other highly skilled persons and managers and executives find themselves in the same fix.

In sum, it will not do to shrug off pension credit losses as not especially significant because—supposedly—later jobs will make up for the loss. Hard experience shows that often is not the case—and there is only conjecture that it works out that way.

In addition, most single employer plans vary benefits in direct proportion to credited service. A person who loses out under several plans because of age and service requirements and luckily gets that last job that does pay off obtains benefits only for those years on the last job. If it is only 10 or 12 years, that means small benefits.

There is a very significant study which was made by the Subcommittee on Labor of the Committee on Labor and Public Welfare of the Senate under the date of November 1971, made pursuant to Senate Resolution 35, section 4, which is available to the Senate and was available to the committees which passed upon the bills—I say bills because we really have here a conglomerate bill before us. It was available to all of them, it was read by all of them, and its data and conclusions were ignored.

When a person loses out under several pension plans, and obtains benefits only for those late years—on page 26 of this welfare and pension plan study of 1971—we are freezing into the pension plan when we adopt this bill. It shows that the average monthly median payment under this bill will be $100 a month; $1200 a year. That is what we are calling a giant stride forward? Mr. President, this is a crawl. This

makes a sham of reform. And when the American people realize the fraud that has been perpetrated against them, our institutions will lose even more credibility.

Here is the statement:

A summary of the median payments by all plans and by size of plan for normal, early, and disability benefits is presented below. The questionnaire circulated by the Subcommittee requested data concerning the average benefit paid to retirees. (The term "median benefit" as used in this study refers to the average monthly benefit paid by all plans represented by the analysis, "median" denoting the average amount separating the upper half from the lower half of the averages.) The summary shows that the median payments for all plans and all benefits, taken together, were less than $100 a month.

The study also shows that for plans with less than 1,000 participants—I might state, for the benefit of the press gallery that this includes them—that 80 percent of them will be paid the very smallest benefits. You can look forward to your old age with horror. You people writing and communicating the news are going to be frozen into your pensions at the status quo of about $100 a month.

I just received this report: A United Press International reporter, such as we have in the galleries, receives $240 a month as a pension after 65. They have a 5-year vesting plan, with no portability. If they leave the wire service, they have to start all over again.

Not too long ago, the case came to my attention of a prominent political reporter for UPI who died, and the pension circumstances are such that this man's widow is getting the trifling sum of $102 a month to live on. This compromise bill will not care for your wives.

Let us go back, then. As an example of that, under a typical blue-collar plan, a monthly benefit of about $60 would result; for a white-collar worker, 12 years might generate a benefit of 18 or 25 or 30 percent of his final salary.

Compare, if you will, the Senate Finance Committee provisions permitting pension benefits of 100 percent of final salary for high paid executives—that was the measure on which we are interrupting the vote at this moment but they will get 100 percent of the final salary—which seems to say that such a measure is socially justifiable and warrants the favorable tax treatment accorded by the Internal Revenue Code. In my judgment, 100 percent is rather rich. But compare the congressional retirement system which contemplates benefits equal to 50 percent of final salary. Pension experts agree that low-paid workers need a larger percentage of wage replacement than do high earners because a much larger percentage of a small budget goes to essentials—food, clothing, and shelter.

Mobility of labor and capital constitute great strengths for the American economic system. It enabled us to mobilize for World War II, demobilize in amazingly short order, rearm for Korea, execute the largest public works program with private contractor employees in recorded history—the interstate highway program—I dare say one that can work a maximum of 3 years—redeploy men and women repeatedly in the post-World War II years. This mobility is essential but private pension plan design—this system on the floor of the Senate—does not fit it.

Enterprises constantly adapt to new circumstances by opening new plants and shutting down or selling existing ones. The distinguished

Senator from Maine (Mr. Muskie) now in the chair understands that as well as anyone I know.

Mr. President, I ask unanimous consent that an excerpt from "The Future of Private Pensions," by Merton C. Bernstein, showing how one company adapted to changing circumstances be printed in the Record.

There being no objection, the excerpt was ordered to be printed in the Record, as follows:

A COMPANY-WIDE PATTERN—OLD AND NEW PLANTS

(From Merton C. Bernstein, The Future of Private Pensions (1964))

The complexities within a single business are vividly illustrated by the recent history of one large manufacturing company. The brisk business in plant openings and closings, from 1939 through 1955, accompanied by product diversification and installation of new machinery, affected its twelve plants (*A–L*) as shown in Table IV–3. Out of a dozen plants, only three operated throughout the 16 years, in 1939 six plants, in 1947 ten plants, and in 1955 eight plants were operational. Plant *L* closed after six years of operation.

Throughout this period executive, administrative, technical, sales, and clerical employment held steady or rose; meanwhile production employment after reaching a high around 1947, declined both in numbers and in relation to total employment.

The company's pension plan contained a vesting provision; but to qualify, 15 years of service were required. Obviously satisfaction of that condition would be extremely difficult.

Other concrete examples of plant shutdowns with large scale loss of pension credits are presented in Chapter V in the context of legal doctrine. Suffice it to observe here that such occurrences obviously are not rare.

PLANTS OF 1 COMPANY IN OPERATION AT 3 SELECTED DATES

1939	1947	1955
Plant A	Plant A	Plant A.
Plant B	Plant B	Plant B.
Plant	Plant C (started 1944)	Plant C.
Plant	Plant	Plant D (acquired 1950).
Plant E	Plant E	Plant E.
Plant	Plant F (acquired 1945)	Plant F.
Plant	Plant G (acquired 1945)	Plant G.
Plant	Plant	Plant H.
Plant I	Plant I	Closed 1954.
Plant J	Plant J	Closed 1953.
Plant K	Plant K	Closed 1950.
Plant	Plant L (acquired 1945)	Closed 1951.

Source: Derived from a file in a study by Samuel Hill and Frederick Harbison, which resulted in their Manpower and Innovation in American Industry (Princeton, N.J.: Princeton University Press, 1959).

Mr. HARTKE. Mr. President, obviously, most of that company's employees could not satisfy a 10-year, let alone a 15-year service requirement for vesting. One west coast auto plant shut down a mere 6 years after it opened. The famed Kaiser automobile experiment did not last 5 years. All of us know of towns in our States where plants shut down leaving former workers stranded without jobs, without job prospects, and that frequently means without credits and no prospects of getting them in a later job.

In 1950, 1951, 1954, plants were opening and closing so rapidly that it was hard to keep up with them. A man certainly could not be qualified for a 10-year period, let alone a 15-year period, under these circumstances. I know of one plant which opened and closed in 6 years. We all remember the Kaiser enterprise in automobiles, an experiment that did not last 5 years.

There is not a Member of the Senate or House who does not know of towns in the States and communities where plants shut down leaving the farmers or the workers stranded without jobs or any job prospects, which frequently meant no credit or prospects of getting any credit toward any pension in later jobs.

Is it any wonder, then, that the Senate Labor Committee's study—the preliminary report of the private Welfare and Pension Plan study, 1971—of a large group of pension plans covering 6.9 million employees spanning the 19 years from 1950 to 1969—that is, the best, the most stable plans—showed that only 4 percent—253,118—of their participants attained benefit eligibility?

This, I think, is amazing when we see that this bill goes a long way toward reform or rectifying these problems and this is the Labor Committee's own report. In other words, 96 out of 100 plan participants did not obtain any benefits—press release of Senators Williams and Javits, April 1, 1971. This compromise bill before the Senate, being hailed as pension reform, is only a pretense to reform. According to their own study, 6,700,000 individuals would obtain absolutely nothing out of the 6,900,000 people who are involved in pension plans. You call that pension reform? Hardly, and for those who left pension-covered jobs, this was the result reported by the Senate Labor Committee's interim report of February 1972:

> . . . 92 percent of all participants who left plans which required 11 or more years of service for vesting and 78 percent of all participants in the plans with ten years or less for vesting . . . did not qualify for benefits (page 15).

Most plans requiring 11 or more years for vesting in fact, require 15 years, and most plans requiring 10 or less in fact require 10.

This gives us some idea of the utility of 10 and 15 year vesting. S. 4, as amended, would provide 100 percent vesting after 15 years. In other words, it would require pay out to only 8 of every 100 people separated from pension-covered jobs. It would require 50 percent vesting—more on that formula in a moment—to those with 10 years service—in other words, it would salvage half the benefits earned for 27 out of every 100 employees separating.

I commend the leaders of the bill, Senators Javits, Williams, Nelson, and Bennett for their efforts to bring this bill up which has not been read by anyone, as of yesterday. The compromise measure is being railroaded through the Senate without giving those of us familiar enough with pension plans to formulate opposition to it which would protect the American workers who have already suffered too much in the private pension plan system.

TRAGEDY OF ALL TRAGEDIES

Even after 1981, for those with 5 years of service at separation, the bill would salvage something—but what? That is the tragedy of all tragedies in this bill.

S. 4 VESTING PRODUCES MINUSCULE BENEFITS

The more liberal vesting formula that would go into operation in 1971 calls for 25 percent of a regular retirement benefit for 5 years of service. Let us apply that to some realistic situations.

Take a plan that confers a \$5-a-month benefit for every year of credited service. For an employee separated with 55 years of credits, that would yield a benefit of \$6.25 cents a month—\$5 times \$5 times 25 percent—or \$75 a year. That is what is being planned as a minimum standard. It will make it possible to guarantee retirement at \$75 a year. It is hardly an amount worth the trouble—or worth the name of reform.

Such a benefit is subject to erosion by inflation. An employee separated at age 45 with a vested claim to \$75 a year would end up at age 65 with a benefit worth \$30—assuming a very modest rate of inflation—not the present Nixon-Agnew rate of inflation of 10 percent.

In the case of a white collar worker earning \$10,000 under a plan giving a 2-percent benefit per year of service, it would work out to \$10,000 times 2 percent times 5 times 25 percent or \$250 for an entire year—and we are talking about 1981, not tomorrow—and since the 51-year proposal takes effect in 1981, between 1976 and 1981—a benefit of about \$20 a month. Between 1976 and 1981 the vesting formula would yield even smaller amounts.

Normal retirement benefit formulas are none too adequate to begin with—to vest only one-quarter of the amount the same years earn for employees who are lucky enough to stay on the job reduces most vested benefits under the bill to worthlessness.

III. WHO PAYS FOR PENSIONS?

This was a subject of great discussion. We spent a whole day before we finally came to the conclusion, which I will bring to the attention of the Senate now, that the taxpayer pays billions of dollars, and therefore plans should serve social purposes.

Out of the \$150 billion in private plan reserves—I do not know whether the Senator from New York (Mr. Javits) is in the Chamber at this moment, but I want to call his attention to the fact that \$100 billion of this \$150 billion is now deposited in the banks of New York City. They are getting the 10 percent prime rate. Some people say that can go up to 20 or 25 percent, as well as capital investments. Pension reform is badly needed. Would the compromise bill correct this imbalance?

The Presiding Officer. The Senator's 30 minutes have expired.

Mr. Hartke. Mr. President, I ask unanimous consent to proceed for another 15 minutes, under an agreement I have with Senator Williams, Senator Curtis, Senator Javits, and a few other Senators who are in control of the time.

The Presiding Officer. Is there objection? The Chair hears none, and it is so ordered.

Mr. Hartke. I might say, parenthetically, that the truth is as I pointed out to the majority leader, that in this remarkable assignment of time on the bill, they assigned 6 hours to the bill—3 hours for the proponents from the Finance Commitee and 3 hours for the proponents from the Committee on Labor and Public Welfare, with nothing for those who thought something might be wrong with this bill. I suppose that in Washington today, you are not supposed to object to anything.

Who pays for the pensions? Private plan reserves are estimated at $150 billion. Their net receipts in 1971 were put at $10.3 billion.[1] Assuming earnings of 5 percent, the $150 billion in reserves would yield $7.5 billion which if taxable at average corporate rates of 50 percent would generate $3¾ billion a year in taxes. Those taxes are not collected for considerable periods, and when taxes are applied to pension benefits, the rates are much lower and in some cases nothing. These taxes forgone grow every year as the reserves are augmented. This subsidy—the equivalent of a $3.75 billion expenditure—can be justified only if it serves a high priority public purpose.

Whenever somebody avoids paying taxes—and this is a tax avoidance bill; some could call it a tax loophole bill and they would be right—somebody else has to pay the difference. That somebody else, generally speaking, is the individual who earns less than $12,000 a year, who pays most of the taxes in the United States.

B. ALL EMPLOYEES UNDER PLANS PAY—ALL SHOULD COLLECT

I have heard on the floor of the Senate and in Finance Committee meetings, that the employer pays part of the pension. That is not so.

It is true that most pension plans today are noncontributory—that is, employers make all the contributions and employees make none. So one would think that the contention that the employer is paying the bill is true.

However, these plans contributions are not a net additional cost to employers. Anyone familiar with the daily newspapers—let alone collective bargaining—knows that when unions and management bargain, they bargain about a pay package which includes fringe benefits. The bargainers cost out the cents an hour equivalent of vacations, health insurance, and pensions. The sums devoted to these purposes come from the pay of all employees. If employers did not contribute to pension plans, they would pay out the same funds in the paycheck in some other employee benefit or direct pay. In other words every employee gives up part of his pay in order to make employer pension contributions possible. They do not expect to lose that money—they do not expect to hand it over to other employees. But that is what occurs under current pension plan design.

Only vesting after brief service will turn the pension lottery into a pension savings system. Only early vesting will end the subsidy from the least fortunate to the most fortunate employees. In other words, every employee gives up part of his pay in order to make it possible for the employer to make his contribution to the pension. When they have that deduction from their paycheck, they do not expect to lose the money. They do not expect to hand it over to some other employees at their expense. But that is exactly what occurs under the current pension plan design, and that is what this bill is going to endorse.

Ironically, it is the pay of the least fortunate employees, those who lose their jobs, that adds to the pension benefits of the most fortunate employees who last the longest. Those fortunate employees are fre-

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[1] SEC, "Private Noninsured Pension Funds, 1971," Release No. 2599, June 28, 1972.

quently and generally the company owners and managers, which is not too uncommon an occurence in small companies.

I am going to read a few examples from the Labor Committee's own report, to demonstrate again the futility of saying that this bill does anything for the majority of the people of the United States. These case histories begin on page 17 of the Preliminary Report of the Private Welfare and Pension Plan Study.

"Case History No. 5: A large oil company with a pension plan that is 38 years old."

> There are currently approximately 42,000 active employees and 6,500 retirees. The plan's assets exceed $450 million.
>
> This plan has 50 percent vesting after 15 years, increasing at five percent a year until there is 100 percent vesting after 25 years.
>
> Of the 105,000 persons participating since 1950, more than 61,000 have left the scope of the plan with no benefits. Of that number, 13,430 had more than five years service and 3,680 had more than ten years service.
>
> In the last five years, of 53,054 participants, 17,657 have left with no benefits, of whom 3,838 had more than five years service and 1,052 more than ten years service.
>
> The total retirements since 1950 are less than 8,500.

I want to point out this: Since 1950, with 105,000 participants, 3,500 received benefits.

"Case history No. 33: A large communications company with a pension plan that is 58 years old." I do not know whether this is one of the broadcasting industries or not. I suppose we could find out. The pension plan is 58 years old.

> There are currently approximately 57,000 active employees and 3,100 retired. The plan's assets exceed $229 million.
>
> The plan has full vesting at age 40 with 15 years service.

That is about what this bill has.

> This plan has very high forfeiture rates. Prior to 1969, the plan had no vesting provisions. Of the 320,124 persons participating since 1950, more than 231,000 have left the scope of the plan with no benefits. Of that number, 5,800 had more than 15 years service, 12,741 had more than ten years service, and 31,419 had more than five years service.
>
> In the lst five years, of 152,028 participants, 108,035 left the plan without any benefits, of whom 2,284 had more than 15 years service, 4,592 had more than ten years service and 8,778 had more than five years service.

I ought to read all these case histories into the record. I wish Senators would have read them. I will say one thing: If Senators had to have their own pension plan adopted according to the standards of this bill, not one Senator would vote for it. The employees of the Senators would be so mad that they would not let the Senators come out of their offices to vote.

"Case history No. 38:"

> This is a pension plan of a major aerospace company. It was established in 1957. The plan covers salaried employees only and has 36,903 active participants and 1,241 retired as of December, 1969.

In other words, in 12 years they had an average of 100 retirees a year.

> Since the plan was established over 60,000 employees have participated with more than 20,000 employees having left the scope of the plan without entitlement to any benefit, over 5,000 of whom had more than five years of service.

"Case history No. 39. This is a pension plan for a large data processing manufacturing firm. The plan presently has 169,030 active participants and has been in existence since 1945."

Under the bill before us with the provision for 50 percent benefits, it would say to this company which had 89,652 employees who left the scope of the plan and 82,326 who left with no entitlement to benefits that they would guarantee 50 percent of nothing. That is what this bill is attempting to sell as pension reform.

Mr. President, I ask unanimous consent to have printed in the Record case history No. 43.

There being no objection, the material was ordered to be printed in the Record, as follows:

CASE HISTORY NO. 43

This pension plan is applicable to a large bank and its affiliates. The current plan has been in existence since 1954, superceding a prior plan established in 1941. There are 11,676 active participants.

There are two interesting facts concerning this plan:

1. The plan failed to report its liabilities, indicating that such information was not available; however, it gave a detailed accounting of its assets.

2. Of an estimated 11,000 employees who left the scope of the plan since 1954, an estimated 8,400 forfeited benefits (over 1,725 of this number had over five years of service and 1,000 had ten years of service).

Mr. HARTKE. Mr. President, in this case there are 11,676 active participants. Of an estimated 11,000 employees who left the scope of the plan since 1954, an estimated 8,400 forfeited benefits. That is what this bill would direct.

Mr. President, I ask unanimous consent to have printed in the Record, case history No. 45.

There being no objection, the material was ordered to be printed in the Record, as follows:

CASE HISTORY NO. 45

This pension plan is applicable to a large electrical power holding company. It has currently 11,765 active participants.

While this is a contributory plan which has been collectively bargained, the employees do not participate in the administration of the plan.

10,818 employees have left the scope of the plan since 1950. Over 50 percent have left without entitlement to benefits, and over 20 percent had more than five years of service.

Mr. HARTKE. In this case 11,818 employees left the scope of the plan since 1950 and over 50 percent have left without entitlement to benefits and over 20 percent had more than 5 years service.

Mr. President, I ask unanimous consent to have printed in the Record, case history No. 47.

There being no objection, the material was ordered to be printed in the Record, as follows:

CASE HISTORY NO. 47

This is a large pension plan in the communications industry covering many separate employers; therefore there are differing dates for when the plan was established for purposes of any one employer. However, the earliest participating employer date given is for 1937.

Of the approximately 277,000 participants in the plan since 1950, over 206,000 have left the scope of the plan and of that number 202,665 have left without entitlement to any vested benefit. Of the 202,665 over 17,000 had more than five years of service.

The plan has two provisions for vesting. The most liberal requires 15 years of service and, in addition, an age requirement of 40 years.

Mr. HARTKE. Mr. President, here is a large communications industry covering many separate employers. Of the approximate 277,000 participants in the plan since 1950, over 206,000 have left the scope of the plan and of that number 202,665 have left without any entitlement to any vested benefit and of the 202,000 over 17,000 had more than 5 years service. This plan has two provisions for vesting and the most liberal requires 15 years of service.

Mr. President, next I ask unanimous consent to have printed in the Record, case history No. 52.

There being no objection, the material was ordered to be printed in the Record, as follows:

CASE HISTORY NO. 52

This is a pension plan of a large aerospace firm; it was established in 1955 and has over 105,904 active participants. The plan is collectively bargained.

Of the over 81,000 employees who have left the scope of the plan since it was established over 66,000 have left without entitlement to any benefit. None of the 66,000 had more than five years of service.

Mr. HARTKE. Mr. President, this is a pension plan of a large aerospace firm established in 1955 and it has over 105,904 active participants. The plan is collectively bargained. Of the over 81,000 employees who left the scope of the plan since it was estabilshed, over 66,000 have left without entitlement to any benefit, and none of the 66,000 had more than 5 years service.

Mr. President, I am surprised that the manager of the compromise bill argued one pension vesting plan for self-employed, saying because they take money out of their pocketbooks rather than paychecks they are entitled to 1 year vesting.

I am surprised they do not look at the teaching industry. The teaching industry is not the highest paid industry. It has portability throughout the United States and they are in that plan forever. If teachers of the United States can do it, then it can be done for everyone.

Only vesting after brief service will turn the pension lottery into a pension savings system. Only early vesting will end the subsidy from the least fortunate to the most fortunate employees.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. HARTKE. Mr. President, I ask for another 15 minutes.

The PRESIDING OFFICER Is there objection? Without objection, it is so ordered.

Mr. HARTKE. I yield to the Senator from Wisconsin.

Mr. WILLIAMS. That was understood to be under the opponents' time.

Mr. HARTKE. I do not know whose time I am using.

Mr. WILLIAMS. We are willing that the time be taken from the opponents.

Mr. Hartke. I will have time under my amendments. All I am doing is taking the time of the proponents to try to educate them a little. I know they do not want to be educated. They want to pass the bill, but a little education does not hurt Senators. I do not agree with the statement that a little education is a bad thing. That is a gratuitous statement and said with lightheartedness.

Mr. President, to continue with my remarks, I turn to another aspect.

IV. THE BIGGEST LOSERS: A. WORKING WOMEN

If private pension plans were designed to exclude women—and perhaps they were—they could not do the job more efficiently.

Women constitute about one-third of the work force. Single women, divorced women, and widows work to earn a livelihood. When they come to retire, those earnings require replacement—but social security benefits replace less than is needed.

About two-thirds of the women at work are married. What most do not realize is that among married couples, there are more families with husband and wife working, than families in which only the husband works (Table 346, 1972 Statistical Abstract of the United States, 219). Almost 20 million married women work. They do so to raise and maintain family living standards. Their earnings require replacement upon retirement, otherwise the family's living standard declines seriously.

While it is common to stress that upon retirement, a couple's income needs shrink, they do not shrink as much as some may believe. Medical costs go up and medicare meets only 40 percent of the medical expenditures of the elderly.

Although many own their own homes, those homes usually are older ones, requiring repairs that the elderly are less able to provide themselves as they once may have—in that area, income needs become larger. While it is common to count the costs of going to work as saved, what are the elderly to do with their new leisure time—simply watch television or wait for the mailman to come with third-class mail or to hear from children who seldom write. Their recreational and travel needs become greater. In fact, those needs generally are not met.

Indeed, many elderly people tell me that they give up taking the daily newspaper—if newspapers want to sell more newspapers they should get on our side on this issue—purchase old bread and rolls to save a few pennies, buy dented canned goods, flush the toilet as little as possible—because it takes 8 gallons of water. That is what it means to be old for millions of Americans today.

Long years of work should earn a retirement of dignity and comfort—not worry and want. Long years of work should produce a pension substitute for earnings—for the tens of millions of women as well as men.

But they do not now achieve pension eligibility in substantial numbers.

Typically women work for shorter periods of time than men as the following tables show, which I ask unanimous consent to have printed in the Record.

There being no objection, the table was ordered to be printed in the Record, as follows:

TABLE A.—MEDIAN YEARS ON CURRENT JOB

Age	All persons	
	Men	Women
30 to 34	3.9	1.8
35 to 39	5.8	2.6
40 to 44	8.4	3.2
45 to 49	10.2	4.4
50 to 54	12.6	6.2
55 to 59	14.7	8.2
60 to 64	15.1	9.4

MEDIAN YEARS—SELECTED OCCUPATIONS

	Men by age		Women by age	
	25–44	45 yr over	24–44	45 yr over
Manufacturing:				
Durable goods	4.5	14.3	2.4	8.3
Nondurable goods	5.3	15.4	2.8	9.1
Wholesale and retail trade	3.3	8.8	1.5	4.9
Operatives and kindred workers	3.8	12.8	2.1	7.7

Source: "Job Tenure" Monthly Labor Review 18-19 (September 1969).

Mr. HARTKE. These data show why pensions so seldom pay off for women. For example, in wholesale and retail trade, where women so commonly work, the median years on the current job of women over 45 was 4.9 years as compared with 8.8 years for men. Women factory workers of 45 years or older had median time on the job of 7.7 years, as compared with 12.8 for men.

Most separated employees are in the lower seniority categories, so the bulk of them lose out—especially women who cannot meet the 15 and 10 years' vesting requirements.

Moreover, substantial numbers of women work part time and part year both because of family patterns and the availability of work regarded—and still regarded—as women's work.

If they are to participate in pensions in any meaningful way, credits for part-time and part-year pay must be mandated. Some plans do give such proportional credits, which demonstrates the feasibility of such an approach.

Section 202(c) of S. 4—as originally reported—requires the Secretary of Labor to "prescribe standards, governing the maximum number of working hours, days, weeks, or months, which shall constitute a year of covered service." That does not do the job for part-time, part-year workers. It does not assure that adequate protection will be given to people on lengthy layoff.

But, if proportional credits are to be given, clearly vesting has to be liberal. For someone achieving one-half year's credit or a quarter-year's credit, a 5-year vesting provision that confers only 25 percent of a normal benfit is about useless.

B. WIDOWS—THE FORGOTTEN WOMEN OF PENSION PLANS

If women as workers do badly under pension plans, women as survivors do even worse. Social Security Administration information indicates that no more than 2 percent of widows receive private plan benefits. Little wonder. Pension plan design excludes them as a practical matter.

Although options under which the plan participant elects to take a smaller retirement benefit and provide a survivor's benefit to a spouse are common—that is what is provided as a minimum in this bill—employees usually do not make the election. One major reason is that the election must be made affirmatively before retirement—sometimes as long as a year or two before. These procedural complexities are enough to discourage most plan participants. In addition, the reduction in benefit during the participant's lifetime discourages the election. In sum, women, who ordinarily outlive their husbands, receive no benefits from their pensions.

I see present on the floor the distinguished assistant majority leader, the Senator from West Virginia. I want to give him an example.

One woman, for example, in West Virginia writes that her husband worked for a company for 50 years, starting in his teens, his pension was paid for 13 months after he retired; then he died and the pension stopped—he had made no election, although his plan had one. He had told his wife that the company pension would take care of them. Whether he knew of the option, understood what he had to do to exercise it, his widow just did not know. But after that length of time and after he drew his pension for a few months, she was left with two teenage daughters and no pension.

NEEDED—ASSURED WIDOW'S BENEFITS

Pension plans ought to provide a separate benefit for surviving spouses. Some few plans now do that, but most do not. Quite a few contain the joint and survivor options described, but some do not. The options are seldom exercised.

My amendment would require a joint and survivor option, assuring the spouse of at least a benefit equal to 50 percent of the retiree's unreduced benefit. In addition, the option would not be waived by failure to exercise it. Rather, waiver would require affirmative action in writing by the participant after being informed of the value of the option. In effect, this combines the survivor provisions of S. 4 and S. 1179, as they were reported, with one major difference—my amendment adds a 50-percent survivor benefit whereas, S. 1179 appears to provide for a survivor benefit of 50 percent of the amount payable to the participant, that amount being reduced in order to provide the survivor benefit. Under my amendment, in other words, not only the participant is protected, but so is his wife. Both benefits would be higher.

THE NEEDED REMEDIES: A. VESTING

Vesting is the cornerstone of pension reform. The empty cupboard at Studebaker and the revelation that so small a percentage of pension participants achieve benefits caused the popular stir that led to this debate. Unless chances for qualifying are substantially increased, there will be no meaningful reform in the eyes of the public.

I would say to those looking forward to meeting their constituents that, if there is one bill that is going to haunt them, it is going to be this compromise bill. Their vote for this bill means that they give their stamp of approval to the status quo which is already an admitted failure.

Fairness and need dictate that vesting should be immediate and complete. In that way, savings for retirement would be spread over more years and the cost per year for any level of benefits would be lower. And the last employer would not bear the cost. But, until plans become more widespread, the added pension costs for separating employees could be larger than the offsetting savings for incoming employees with substantial savings. The American business and labor communities are not ready for such a radical step.

I would have hoped that the committee, after having made a good study and having such good information in their hands and after seeing the inadequacies of the present system, would have had the good judgment to present a meaningful reform bill.

But, in being expedient—which is what the proponents of the bill are implying, and what I suppose the Senate is going to say—I do not think we can leave the present system substantially unchanged. The American public finds present pension design impractical. So do the Labor and Finance Committees. The Senate Finance Committee report summarizes one aspect:

At present, only one of every three employees participating in employer-financed plans has a 50 percent or greater vested right to his accrued retirement benefits. Moreover, 58 percent of covered employees between the ages of fifty and sixty and 54 percent of covered employees 60 years of age and over do not have a qualified vested right to even 50 percent of their accrued retirement benefits. As a result, even employees with substantial periods of service may lose retirement benefits on separation from employment.

To transform that monstrously impractical result, mandatory earlier vesting is required. The report described results from plans in which 10-year and 15-year vesting are the rule. Under one-quarter of plan participants are under plans with no vesting. But three-quarters are in plans that now have 10- and 15-year vesting—and not graded as S. 4 and S. 1179 propose.

No one now questions that 15 years of service under a plan should qualify for 100 percent vesting. All major bills before Congress so provide. The question is whether we will continue to permit the massive pension credit losses reported on April 1, 1971, by the Senate Labor Committee.

The original S. 4 formula of 30 percent vesting at 8 years would essentially perpetuate the present situation for three-fourths of those covered under plans. It would do little to salvage benefits for many others, because most of those separated from plans with 10-year vest-

ing—most with 100-percent vesting at that point—have nothing to show for plan participation.

The S. 1179 formula, reportedly incorporated into the revised S. 4, would commence vesting after 5 years of service—but only for 25 percent of the value of a regular retirement benefit. As already noted, the amounts thereby salvaged are negligible.

What I propose—moving over a 5-year period to a 5-year 100 percent vesting requirement—would obtain more for employees, would produce a healthier pension system, would give people who worked, more assured income and less threat of being forced into welfare or some other form of dependency. It really is an extremely moderate proposal—really not enough to meet the need—but it would meet the need better. It is moderate enough to require only modest increases in cost according to the actuarial calibrations made by the same actuary using the same methods as produced the cost figures for the Senate Labor Committee.

The fact of the matter is that with just a two-tenths of 1-percent increase in payroll, we can have this major change. I would hope that the manager of the bill, the distinguished and progressive chairman of the Labor Committee, would examine his vesting proposal on that ground and not succumb to those people who put the dollar first and the people of his country last.

The PRESIDING OFFICER. The time of Senator has expired.

Mr. HARTKE. Mr. President, I ask unanimous consent that I have an additional 5 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HARTKE. Mr. President, I am talking about protection against improper job loss.

No vesting formula will produce real employee protection so long as employers are free to fire employees to defeat pension eligibility. Unfortunately, the Senator Labor Committee studies document many such occurrences. No statutory protection now exists to prevent such action.

I point out that most people start to work at the age of 18 and they will not become eligible until they reach the age of 30 under the provisions of the compromise bill. They have approximately 12 years of work before they become eligible.

These kids are entitled to more protection from Congress. We send them out to fight a no-good war and then get them back home and give them a no-good pension system.

Most collective bargaining agreements protect employees against discharge without good cause and provide effective enforcement machinery in arbitration proceedings whose results are enforcible under section 301 of the Labor-Management Relations Act. But roughly half of all pension participants are not unionized and so they lack such protection. Especially vulnerable are managers and executives whose substantial pension potentialities provide an incentive to their discharge before vesting. The managers of the bill ought to think twice, too. Discipline and discrimination can be so unpleasant as to amount to constructive discharge, a term used by the National Labor Relations Board. That can be the type of harassment which does not

say that one is fired, but makes living such a hell that a person wishes he did not have to hang on and endure.

In recognition of that problem, section 610 of S. 4 as originally reported—made it illegal to "discharge, fine, suspend, expell, discipline or discriminate" against plan participants to defeat rights under the act or a plan. The language parallels section 8(a)(3) of the National Labor Relations Act and should do the trick—but only if an adequate enforcement machinery exists.

Section 610—as S. 4 was reported—relies on sections 602 and 603 for enforcement. Section 610 was added after 602 and 603 were drafted, and it was not redrafted to cover 610. They are limited to remedying unproprieties by fiduciaries, whereas section 610 makes illegal certain conduct by employers and unions.

In addition, sections 602 and 603 require court action. What employees need is easy access to an expert group which can rapidly bring their complaint before an administrative tribunal with some expertise in the subject. While many lawyers represent management and unions and fiduciaries, there is no so-called employee bar, little expertise among lawyers in pension matters.

Hence, I propose administrative machinery, subject to the Administrative Procedure Act, to hear complaints of violations of section 610 where a collective bargaining agreements' arbitation provisions cover the subject of the controversy and the situation meets the norms established by the National Labor Relations Board for deferring to arbitration, arbitration would be used. Otherwise the quasi-judicial machinery established by the Secretary of Labor could operate.

These are moderate proposals to meet urgent needs. The opportunity to act on them may be a long time in coming again. We ought to do the job right this time.

We ought to go straight to the heart of pension reform. Reform should be substantive rather than illusory. However, I do not find the heart in the Senate to deal with pension reform at this time. We have a case of cardiac arrest here, and it will kill the pension system in the long run. These reforms will fail to assuage the good judgment of the American people. They know that there are grave injustices which will not be corrected by this bill. The private pension plan system will ultimately have to succumb to a national system under the Social Security Administration.

Mr. WILLIAMS. Mr. President, would the Senator yield for a question?

Mr. HARTKE. I yield. I would like to thank first those Senators who yielded me time on the bill. I know that there was some confusion. I thank the assistant majority leader for helping to work out the matter.

Mr. ROBERT C. BYRD. Mr. President, the Senator is always welcome.

Mr. WILLIAMS. Mr. President, the Senator will offer various amendments.

Mr. HARTKE. Yes.

Mr. WILLIAMS. Does the Senator have an amendment that requires employers to have a private pension plan for the employees of the company?

Mr. HARTKE. No. However, I would be glad to submit one if the chairman of the Labor and Public Welfare Committee would agree to cosponsor it.

Mr. WILLIAMS. Mr. President, I just wanted to ask the question, because so much of what the Senator is going to propose would, I fell, really defeat the present system of private pension plans that are on a voluntary basis.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. WILLIAMS. Mr. President, I yield myself 1 additional minute.

The PRESIDING OFFICER. The Senator from New Jersey is recognized for 1 additional minute.

Mr. WILLIAMS. Mr. President, until the Senator does impose upon employers the mandate to have pension plans, I would think that all of the provisions that the Senator would offer, put together, would just kill off any attitude on the part of the employers who do not have any pension plans to come on in.

Mr. HARTKE. Mr. President, first, let me say that it is to the contrary. I do not think that is true. I think it would provide more security. I think that the people who are able to afford the cost of pension plans are basically those in union organizations. There is nothing in the bill to encourage compliance.

What the Senator is doing is saying that we should put a stamp of approval on a no good pension plan in the United States, one that the people are fed up with. Only 4 percent of the people are actually participating in it, according to the committee's own study, and getting a maximum benefit of $100 a month. We are saying that we do not want to do anything to that program.

I find that we are surrendering. No wonder the welfare rolls are filled up when people do not want to do anything to correct this.

If we had a decent pension plan and a decent social security system, we would not have all of the hellish problems that we have today.

Mr. WILLIAMS. Mr. President, I share the concern of the Senator over the hellish problems and all other problems connected with poverty. However, this bill does really do something. I say most Members here feel very certain that it does something, and we will get to a vote in a little while.

Mr. HARTKE. May I ask the Senator where the security is for the ordinary individual? What security does he have under the committee's own study?

Mr. WILLIAMS. As it is now, under the private pension plans, people can go for 20 years without any vesting. Under this bill, if it becomes law, there will be the first minimum vesting standards of benefits in the pension plan.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. WILLIAMS. Mr. President, I think that the Senate is ready to return to the amendment now pending.

The PRESIDING OFFICER. Who yields time? The pending question is Nelson amendment No. 506. Who yields time?

Mr. THURMOND. Mr. President, I will yield myself time against the time allotted to me. I have 2 hours allotted on my amendment.

The PRESIDING OFFICER. The Chair will state that amendment is not before the Senate.

Mr. THURMOND. Mr. President, I have an amendment at the desk. I ask that it be stated.

The PRESIDING OFFICER. Does the Senator ask unanimous consent that it be in order to offer it?

Mr. THURMOND. Mr. President, I ask unanimous consent that it be in order to offer this as an amendment to the amendment No. 506 of the distinguished Senator from Wisconsin (Mr. Nelson), and that I be shown as a coauthor of the resultant amendment.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

The amendment, as amended, will be stated.

The legislative clerk read as follows:

In title VII, on page 60, after line 17, add the following:

"(f) LIMITATION ON DEDUCTION FOR CONTRIBUTIONS ON BEHALF OF CORPORATE EMPLOYEES.—Section 404 (relating to deduction for contributions of an employer to an employees' trust or annuity plan and compensation under a deferred-payment plan) is amended by adding at the end thereof the following new subsection:

"'(g) LIMITATION OF DEDUCTION FOR CONTRIBUTIONS ON BEHALF OF CORPORATE EMPLOYEES.—Notwithstanding the provisions of subsection (a), no deduction shall be allowed for a contribution made for or on behalf of a corporate employee to or under a defined benefit plan or a defined contribution plan if the amount of such contribution or if the benefit provided under the plan exceeds the amount specified as an alternative limitation on deduction or benefits for proprietary employees in subsection (e) (4) and section 401(j) (2), whichever is applicable'.".

On page 105, lines 20–22, strike out "a proprietary employee (within the meaning of section 412(c) (1) of the Internal Revenue Code of 1954) or".

On page 120, lines 3–5, strike out "or a proprietary employee (within the meaning of section 412(c) (1) of such Code)".

On page 191, in lines 20–22, strike out "or a proprietary employee within the meaning of section 412(c) (1)".

On page 35, lines 6 and 8, paragraphs (2) and (3) are redesignated (1) and (2) respectively.

On page 35, strike out lines 3 through 5.

On page 35, on line 6, strike out "sections 72(m) (4)," and insert "section" in lieu thereof.

On page 35, line 20, strike out ". (2), and (3)" and insert "and (2)" in lieu thereof.

Mr. THURMOND. Mr. President, my interest in this pension bill has been primarily to remove a discrimination against small businessmen. I feel that there should be equality between the small and large businessmen.

Yesterday, I offered two amendments to this most important private pension bill and these amendments were accepted without argument by the bill's supporters.

The first amendment would restore equal tax treatment of lump sum distributions and the $5,000 death benefit provisions to employers of both large and small corporations.

The second would permit employees who are also stockholders in small corporations to have the same access to the Central Portability Fund now provided in the legislation only for employees of large corporations.

I again commend the managers of the bill for their acceptance of these amendments. With the acceptance of the above mentioned amendments, the committee moved in the direction of equality of treatment concerning large and small businesses. However, we now have before the Senate another amendment: This amendment, as I explained earlier, will eliminate the "proprietary employee" limitations from the bill. Simply stated, a vote for my amendment will be a vote for equality among small and large corporations. A vote against this amendment will be a vote in favor of big business at the potential expense

of small businessmen. I do not see how as representatives of all the citizens of our great Nation we can justify this discrimination against our small businessman.

Mr. President, the Comprehensive Private Pension Security Act of 1973 is in many respects a laudable bill and reflects an enormous amount of work on the part of both the Committee on Finance and the Committee on Labor and Public Welfare. Extensive hearings have been held by both committees, and the views of various interests have been heard. As a result, a bill has been produced which, if enacted into law, will go far to cure many of the inequities and potentials for abuse that are present in our private pension system today.

However, included in the bill was a provision which, in my opinion, represented a serious departure from the overall goal of strengthening and improving the private retirement system. I am referring to the limitations placed upon the plans benefiting a class denominated as "proprietary employees."

A proprietary employee is one who owns at least 2 percent of the stock of a corporation and who, when combined with all other such 2-percent stockholders, is found to own 25 percent or more in the aggregate of the benefits provided in a qualified retirement plan. Obviously such a definition would have included virtually all small corporations.

The limitations placed on the benefits available for such employees were quite extensive and were found in numerous sections of the bill. Senator Nelson and I have now agreed to amendments which will eliminate the restrictions of the original bill.

These limitations represented discrimination against small businesses—discrimination that this body has, to my recollection, never before sanctioned. Indeed, we have always taken great pains to encourage the continuation of small businesses and the creation of new business concerns. Competition is the goal to which we have dedicated our private economic sector, and the formation and continued existence of small businesses is an important spur to new competition. Without such, the continuous influx of new ideas and procedures may be curtailed and our economic growth could suffer.

To the best of my knowledge, the proprietary employee provisions were not the subject of any of the public hearings that led to the formulation of this bill. In my opinion, the concept represented the rankest type of discrimination. The primary impetus for reform of the private pension system came from a number of specific cases where long-term employees were disappointed in their pension expectations by virtue of inadequate funding, lack of adequate vesting and the other causes.

So far as I know, none of these cases involved small or closely held businesses. In addition, most owners of closely held businesses are resigned to the fact that the Internal Revenue Service imposes on them more restrictive rules regarding funding, vesting, and investment of funds than are imposed in the case of pension plans of larger, publicly held corporations. This made it particularly surprising to me that closely held businesses would be singled out for punitive treatment in the pension reform area.

No one has yet explained to me the tax equity or public policy reasons behind a rule that provides that the owner of a closely held

business should be treated more harshly than a highly compensated executive of a publicly held business with regard to qualified retirement plans.

The committee report states that the proprietary employee limitations are a necessary segment of a package that provides for increasing the limits on contributions for self-employed persons and creating a new system of individual savings for retirement. While two-thirds of this package was commendable and was consistent with the announced purpose of the bill, the proprietary employee provisions represented a step backward.

The real purpose of increasing the H.R. 10 limits from $2,500 to $7,500 is to narrow the discriminatory gap existing between self-employed persons and corporations. While such an increase does narrow the gap, it does not eliminate the differences in rules applicable to retirement plans for the respective entities, nor does it totally eliminate the gap on contributions allowable. To impose similar restrictions on small corporations would have run counter to the overall objective of providing equality. It would have spread the discriminatory treatment to another vast pool of employees. Such an act would have simply divided the retirement benefit treatment into two segments—liberal treatment for corporate giants and restrictive treatment for small businesses. I strongly urge that the rules applicable to qualified plans should not be dependent upon the form or the size of a business organization.

Mr. President, our amendment will now erase these distinctions between employees of large and small corporations, because there is no justification for their continuation, and also because equal treatment of small corporations will tend to encourage these small businesses to institute the very retirement plans that are now lacking in the private sector of our economy.

The report of the Senate's Special Committee on Aging, released in January of 1970, states:

> The lack of pension coverage is obviously concentrated among small employee groups.

While it cannot be stated categorically that the limitations imposed on "proprietary employee" corporations would have directly caused a dearth of retirement plans in the small business sector, there can be little doubt that such limitations would not have encouraged such small businesses to set up retirement programs.

At both present and foreseeable levels, the social security system is not adequate in and of itself insofar as retirement income is concerned. Retirement benefits under social security are presently supplemented by pension and profit-sharing benefits by a vast number of large companies operating in this country. As a result, a gulf is rapidly developing in the financial status of retirees in this country caused primarily by the size of the company by whom the retiree had been employed. This situation is neither equitable nor desirable in our economy and any pension legislation should have, as one of its primary goals, the encouragement of more small businesses to institute retirement plans of both the pension and the profit-sharing type.

According to U.S. Department of Commerce statistics, over 90 percent of all businesses in this country employ fewer than 20 people. These businesses should be encouraged to adopt and implement retirement plans. However, the effect of the "proprietary employee" limitations would have been to discourage such action.

Mr. President, I emphasize that the "proprietary employee" restriction was not proposed in any prior bill introduced in the Senate or the House of Representatives, nor was it discussed in any detail in any testimony presented to the Subcommittee on Private Pension Plans during the lengthy hearings which were held on S. 1179.

An analogous situation occurred in 1969 during our debate of the 1969 Tax Reform Act. At that time, the Finance Committee had reported favorably a provision—which had no counterpart in the House bill—that would have limited contributions on behalf of shareholder-employees of professional corporations to the maximum amounts permitted under the H.R. 10 provisions. This particular provision was deleted from the bill during Senate debate by an amendment which was passed by an overwhelming margin. In many respects the "proprietary employee" limitation represents a resurrection of the "shareholder-employee" concept previously rejected by this body.

Mr. President, I urge that the "proprietary employee" limitations should be rejected. The amendment I am offering would do that.

Now, I want to take this opportunity to thank the following Senators who joined on my original amendment and who have supported the concept that small businessmen should be placed on the same basis as large businessmen:

Senators Towers, Fannin, Helms, Brock, Hollings, Bartlett, Bellmon, Goldwater, Eastland, Nunn, Gravel, Cook, and Mathias.

At the same time, I recognize that abuses have existed in the private pension area. Accordingly, I join Senator Nelson in sponsoring the overall limitation of $75,000 as a maximum annual pension benefit to employees of both large and small corporations.

Mr. President, at this time, I join the distinguished Senator from Wisconsin (Mr. Nelson) in offering this compromise amendment and urge my colleagues to support its passage.

I am very much pleased that we have been able to reach agreement on this matter which now will place the small corporations and small businessmen on the same basis as the large businesses and large businessmen. The Senator from Wisconsin has an amendment that places a $75,000 limitation to employees of both large and small corporations, and so we are merging the two amendments into one amendment, and we are becoming cosponsors of that amendment.

Mr. President, I yield the floor at this time, but reserve the remainder of the time allotted to me.

The Presiding Officer (Mr. Domenici). Who yields time?

Mr. Nelson. Mr. President, this is a simple amendment to amendment No. 506. I have examined it, and the staff has examined it. It eliminates some additional distinctions between proprietary corporations and general corporations which were not eliminated in the two major amendments offered yesterday. I am prepared to accept it.

Mr. Javits. Mr. President, we believe that the amendment which has been agreed to between Senator Thurmond and Senator Nelson car-

ries out the fundamental thrust of the Nelson amendment, which I am for, and therefore I shall vote for it. But, in fairness to those who voted on the Nelson first amendment. I believe there should be a rollcall vote and therefore I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. Nelson. Mr. President, may I inquire of the Senator from New York, he is asking for a rollcall vote on the amendment of the Senator from South Carolina to my amendment No. 506?

Mr. Javits. Yes, as I understand it, it is one amendment now and the Senator has taken the amendment of the Senator from South Carolina.

Mr. Nelson. So the Senator is asking for a rollcall vote on amendment No. 506 as amended.

Mr. Javits. Exactly right.

The Presiding Officer. The Senator from Wisconsin has not yet accepted the amendment of the Senator from South Carolina. He has not yet modified his amendment.

The pending question is on agreeing to the amendment of the Senator from South Carolina (Mr. Thurmond).

On this question the yeas and nays have been ordered——

Mr. Nelson. Then this is a vote on amendment No. 506 as amended by the amendment of the Senator from South Carolina, is it not?

The Presiding Officer. It has not been amended as yet.

Mr. Javits. If the Senator from Wisconsin will accept the amendment of the Senator from South Carolina, then I ask unanimous consent that he may be permitted to modify his amendment accordingly.

The Presiding Officer. The Senator from Wisconsin has the right to modify his amendment. If he cares to do so, that is his privilege.

Mr. Nelson. Mr. President, I modify my amendment No. 506 in accordance with the amendment as offered by the Senator from South Carolina (Mr. Thurmond).

The Presiding Officer. The amendment is so modified.

Mr. Javits. Mr. President, now I ask for the yeas and nays on amendment No. 506 as modified.

The yeas and nays were ordered.

Mr. Nelson. Mr. President, if it has not been requested, I ask unanimous consent that the name of the Senator from South Carolina (Mr. Thurmond) be added to amendment No. 506 as modified, as a cosponsor with me.

The Presiding Officer. Without objection, it is so ordered.

Mr. Taft. Mr. President, will the Senator from New York yield?

Mr. Javits. I yield 2 minutes on the bill to the Senator from Ohio.

The Presiding Officer. The Senator from Ohio is recognized for 2 minutes.

Mr. Taft. Mr. President, I thank the Senator from New York for yielding me this time. I will support the Nelson amendment as modified by the amendment of the Senator from South Carolina because it is important to remove any discrimination that may exist between large and small corporations in this respect. I have many questions as a matter of principle as to whether it is correct to put a limitation on the benefits that may be paid other than those prescribed as reasonable compensation by regulations of the Treasury Department.

I would prefer leaving the entire question as to reasonableness of the pension contribution to the Internal Revenue Code. However, as a practical matter, it seems to me that the $75,000 limitation is agreeable at this point, at least, as an acceptable substitute.

I would hope that the Finance Committee, however, in considering any future tax legislation, would reexamine the desirability of imposing such a limitation at all. Perhaps such a limitation should vary with the particular circumstances of the type of plan involved.

A flexible approach may be more sensible than having Congress vote a flat limitation on pension contributions.

Mr. HOLLINGS. Mr. President, I rise in support of absolutely equal and equitable treatment of our big business people and our small business people, and of the people who work in our big business leviathans as well as our hometown enterprises, in this matter of pension reform. There is no reason in the world why the vice president of General Motors should be treated any differently than the president of John Q. Smith in Anytown, U.S.A. Nor should a worker in the one firm be singled out for more stringent regulation than a worker in the other. We have had enough of discrimination for, discrimination against, tilting toward, tilting away, favoring particular groups with all sorts of special incentives and ignoring the rest.

Now is the time to come clean. And we can come clean on pension reform by treating everyone alike—by giving each of them the opportunity to recruit the best talent and hold out to that talent the prospect of similar reward for a similar career of hard work. Any other approach is unfair and un-American. This country was built on free enterprise, but when we come to consider ridiculous limitations such as those we have heard proposed in recent years, we are legislating unfree capitalism. We are legislating a stagnant state capitalism—or worse.

Any pension reform legislation must provide, first and foremost, equal protection of the law. That is the root of the question before us—shall we treat everyone alike, guarantee to everyone their right to equal protection under the law—or shall we instead legislate to help the favored few.

The amendment being offered by the distinguished senior Senator from South Carolina would see to it that the equal protection of the law comes first.

It is an equitable amendment, in that everyone receives the same treatment.

It is wise because it gives incentive, instead of taking us further down the road of government by impediment and strangulation by degree.

And it is good because it is an amendment which benefits middle America—the hard-pressed men and women who take part in business activities in hundreds of thousands of American enterprises.

It seems every time we pass a bill, we put the burden on middle America. Well, here is a chance to repair some of the damage. Here is an opportunity to recognize our responsibilities to provide for the general welfare. Here is an amendment true to our people because it is true to those great principles of fairness, equity, and equal protection of the law.

Let us act for the working men and women of America who for too long, when they are not being burdened are only being forgotten. I

urge immediate passage of this important amendment, and I commend the distinguished senior Senator from South Carolina for introducing it. I am proud to support this measure. It is the only fair thing to do.

Mr. HELMS. Mr. President, as a cosponsor of the amendment submitted by the distinguished Senator from South Carolina (Mr. Thurmond), I fully concur in the decision to consolidate the Nelson amendment with the Thurmond amendment. I feel that this is a reasonable compromise, certainly for the time being and under the existing circumstances.

However, Mr. President, I have some lingering concerns. I must say that I am opposed to the efforts being made in the Senate to impose new and inequitable limitations on the retirement benefits which will be available for a class of wage earners. My opposition does not concern whether a maximum of $45,000 a year, or $75,000 a year, or some other figure is adequate to provide retirement benefits for corporate employees. It springs from a more fundamental base.

This Government was founded upon a very strong philosophical foundation. The basis for that foundation is that all men are created equal, with the same natural rights. The corollary to that principle, of course, is the fact which was recognized by our Founding Fathers that all men are unequal in their natural talents and abilities and that a man should be secure in his right to earn and possess the property which his labor has produced.

Our tax laws must conform to this philosophy if they are to be consistent with the purpose of this American Government. The only legitimate reason, in my humble opinion, for the existence of our many tax laws should be to raise revenue. Instead, what we have been witnessing here on the Senate floor is an attempt to use the tax laws to equalize the economic means of Americans.

I submit that this is wrong and contrary to our American philosophy that a person is entitled to enjoy the fruits of his labor.

Who in this body has the right and the authority to determine what is just compensation between an employer and an employee? The answer is: No Senator—that decision belongs to the individuals concerned. There has been much talk of pension plan contributions in terms of a tax loophole. This is not a loophole; every penny which is paid into a pension plan will be taxed at its full rate when it is distributed.

It is my feeling that Congress should keep its hands off this matter of deciding what retirement income is appropriate and leave the decision to the employer and employee. Let's get the tax laws back where they belong, as originally intended, based on the need of the Government to raise revenue in support of its operations—and away from the policy of promoting social and economic equality.

SMALL BUSINESS INTERESTS IN THE PENSION BILL RECOGNIZED

Mr. BIBLE. Mr. President, as chairman of the Select Committee on Small Business I would like to take a moment to pay tribute to the extraordinary work that has been done on the pending pension legislation by many Senators, committees, and staff members including the chairman of the Senate Finance Committee (Senator Long); the Senator from Wisconsin (Mr. Nelson) who conducted the hearings

on the tax aspects of pensions in the Finance Committee; the Senator from Texas (Mr. Bentsen), who proposed S. 1179; the Senators from Utah and Nebraska (Mr. Bennett and Mr. Curtis), the ranking minority members of the Finance Committee and its Pension Subcommittee; the Senator from New Jersey (Mr. Williams), and the Senator from New York (Mr. Javits), the chairman and ranking minority member of the Senate Labor Committee and principal sponsors of S. 4.

Anyone who has had contact with deliberations on these bills must be impressed with the sheer volume of hard work forming the foundation of the bills brought to the Senate floor: S. 4, 102 pages; S. 1179, 283 pages.

Substitutes for S. 4: A. 496, 227 pages and A. 497, 71 pages.

Behind these bills stand some 1,700 pages of testimony and public hearings, panel discussions and summaries.

After this material was presented, the next step was a series of executive sessions where the policies and the language of the bills were actually hammered out. The judgments on matters of vesting, portability, termination insurance, fiduciary standards, enforcement, and retirement savings were many, exacting and difficult. The document reporting S. 1179 to the Senate extended to 157 pages.

Following the drafting process, Senators and staff were called upon to reconcile the two major proposals. This involved intensive consultation and an extra executive session of the Senate Finance Committee with long hours and tough drafting burdens for the Joint Committee on Internal Revenue Taxation and the Senate Legislative Counsel, among others.

Although there is probably much more to this story that is better known to the major participants, these things occur to me as worthy of mention—particularly in light of some statements recently made by the President to the effect that Congress has not snapped to attention and passed every bill recommended by his administration—some of which are at best questionable.

The pension bill, which we are debating, presently affects every worker in private employment and every business—large and small. It aims at extending the retirement security so that it is within reach of every worker. It seeks to improve and reform the administration of these plans, so that men who have labored for many years cannot be deprived of the retirement income they have well earned. It affects the entire structure of private retirement and is really a monumental bill.

Because of the impact on smaller business, the select committee is proud to have played a minor role in this legislative process.

The early proposal to extend the new self-employment limitations broadly to corporations raised widespread concern among small corporations and their professional advisers. As a consequence, our committee and several of its members received comment and information from a variety of sources including their small business constituents; accountants, such as Gilbert Simonetti of the American Institute of Certified Public Accountants; and lawyers such as Louis Diamond, Steffan Tucker and Sheldon Cohen. The thought and effort put into these many presentations, including much contributed in a spirit of public service, were greatly appreciated.

In an effort to discharge our committee responsibilities, we assembled this information and made it available to the Finance Committee and the Labor and Public Welfare Committee, as well as to other interested Senators. Today, we feel it would be useful to make this data generally available to Members of the Senate in connection with this debate and the various votes on the provisions for retirement savings on the part of small, self-employed businessmen and small corporations.

Therefore, I ask unanimous consent that a sample of our correspondence together with a memorandum and a study of the impact of certain proposals on small corporations be included in the record at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. BIBLE. I take pleasure in pointing out that the Finance Committee and the Joint Committee on Internal Revenue Taxation were responsive to the varied and complex difficulties in the small business area. These were the subject of the additional executive session of the Finance Committee on September 14, which I have mentioned.

As a result, the committee amendment 497 largely resolves the small business problems of which we are aware. Some may wish for more and others less. However, all in all I believe the provisions on self-employed deductions, corporate limits, partnerships, and integration with social security are satisfactory to the small business community as far as indicated by the material which has come to us.

Further, the drafting of these provisions exhibit a sensitivity to the problems of new and growing businesses and a willingness of Senators and their staffs to shoulder the extra work involved to assure fair treatment for smaller firms as a part of this complicated and technical legislation.

I, therefore, salute all who had a part in bringing this pension legislation to the point of passage in the Senate, and I hope that the resulting bill will advance to consideration in the House and final passage in this 93d Congress.

There being no objection, the correspondence was ordered to be printed in the record, as follows:

SEPTEMBER 14, 1973.

Hon. RUSSELL B. LONG,
Chairman, Finance Committee,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: I understand that the pension reform bills are now scheduled to be taken up on September 18 in the Senate and are currently under consideration by the Committee on Finance.

During the past month certain information regarding the extension of the proposed new self-employed deduction limitations to corporations has come to the Select Committee. It has raised concern over the possible impact of this proposal on corporations not composed of professionals.

Because of our duties to the small business community, I thought it would be appropriate to pass this data along to Senators such as yourself and your colleagues who have the heavy primary responsibilities in connection with this legislation.

I hope this material, including a memorandum prepared by the staff, will be helpful in discussions by you and the Committee incident to the further advance of these bills.

Cordially,

ALAN BIBLE, *Chairman.*

SEPTEMBER 14, 1973.

MEMORANDUM

Subject: Extension of Self-Employed Pension Limitations to Corporations.

As examination of S. 1179, the pension reform bill reported by the Finance Committee, has developed over the past month, concern over the extension of self-employed limitations to corporations has mounted. Correspondence received by the Committee and several of its members has been analyzed, and the Committee sought further information on the possible effect of this proposal.

Attached is a study of five existing pension plans, not involving "professionals," in the active portfolio of a Cleveland pension consulting and managing firm: a funeral home, lithography printer, machine shop, a general contractor, and a wholesale firm.

COVERAGE

Of course, we cannot judge the validity of the firm's assumptions, or its sample. However, it may be noted that the general construction and wholesaling firms do reflect how pensions of employees as well as owner-managers could be sizably reduced under such a rule. Although this is fragmentary, it is evidence of possible pressure to terminate an existing plan or reluctance to begin a new one, which may be generated by such a provision.

Since a significant proportion of the employees not now covered by pension plans are believed to work for smaller firms, discouraging coverage would be inconsistent with the thrust of the bill as a whole. It is estimated that small business accounts for about half of U.S. employment. The Daily Tax Report (BNE) of September 13, 1973, reports that for firms with less than 50 employees 28 percent are covered by retirement plans compared with 57 percent for 50–99 employee firms, 69 percent for 100–500 employee firms and 95 percent for 500 and over firms.

ADVERSE COMPETITIVE IMPACT

This problem seems to become more acute when the definition of owner-manager or proprietary employee is in terms of 2 percent stock ownership.

Competitive disadvantages to smaller business may arise not only from the unlimited pension funding which would still be permitted to larger firms. In addition, such a rule might inhibit the willingness of small firms to offer stock of the company as an incentive for retaining key employees.

While it seems clear from the Finance Committee report (S. Rept. 93–383, p. 119) that professional corporations are the target of this provision, it may extend much further—perhaps to all but the publicly-held corporations.

APPROPRIATENESS OF THE 2 PERCENT STANDARD

Existing analogies in the Internal Revenue Code to closely held corporations appear in section 6166(c) (i.e., 20 percent) and sections 1371(a) (suggesting 10 percent) and 1379(b) (re pensions, 5 percent). With regard to the probable structure of smaller manufacturing and service firms, possibly as illustrated by the attached examples, might not an ownership standard of 20 percent serve the purpose?

In considering this question, attention could be given to "whether self-employed persons and corporate employees . . . engage in substantially the same economic activities" (Tax Proposals Affecting Private Pension Plans, May 8, 1972, p. 8). The other variable in the formula (e.g., 25 percent of benefits) could still be adjusted to leave latitude to deal with undue concentration of benefits.

POSSIBLE AVENUE TOWARD RESOLVING THE DIFFICULTY

An approach already considered in S. 1179 is in terms of limiting the ultimate pay-out of the pension to a suitable percentage of compensation. This approach has the advantage of accommodating the variable of age at the time of entry (which is considerable) and the increasing cost of living.

It has been brought to our attention that many businesses typically take several years to achieve the financial stability required to undertake a commitment to a fixed-cost plan, and thus probably enter the retirement-deferred compensation field with a profit sharing plan as to which contributions are voluntary from year to year. It would therefore seem that any rules in this area be uniform as between the various types of retirement plans.

S. 1179 adopted the position taken in Revenue Ruling 72–3 in which the Internal Revenue Service established the 100 percent standard administratively. However, if 100 percent of the highest three years of salary is deemed too high a ceiling for the statute, perhaps the Finance Committee could consider 80 percent or some other percentage. We are informed that 80 percent is the standard for Federal Government Civil Service Employees. There may be some problems with this, as the founder of the business may have many more years of past service at the time a plan is adopted. However, the technical competence of the Committees involved is more than equal to drafting a provision which would prevent unfair advantage.

This formula could also be coupled with an upper limit on the salary to which the 80 percent could apply—for example, the five exhibits attached would suggest a base in the neighborhood of $50,000.

POSITION OF SMALL BUSINESS ORGANIZATIONS

Groups such as the National Small Business Association and the National Federation of Independent Business have already expressed their concern over what they feel are serious problems inherent in this proposal, and this correspondence is before other Senators as they enter the final stages of deliberation on this important measure.

MOSKAL, JARAS,
RICCHETTI & ASSOCIATES, INC.,
Cleveland, Ohio, September 7, 1973.

Re: Senate Finance Committee pension proposal which discriminates against small business corporations.

Chairman, U.S. Senate, Select Committee on Small Business, Old Senate Office Building, Washington, D.C.

DEAR SENATOR BIBLE: Our organization is engaged in the design, installation and administration of small employer retirement plans. Our clients are exclusively small closely held corporations employing between 5 and 100 employees. Over the past several years we have had occasion to work with several hundred small employer pension and deferred profit sharing plans.

We are quite concerned about certain provisions of the Pension Reform Bill (S. 1179) recently reported out of the Senate Finance Committee. The objectionable provision *limits retirement plan contributions for "owner-manager" employees to a maximum of 15% of compensation or $7,500.00, whichever is the lesser.* "Owner-managers" have been defined in the bill to include anyone who owns two (2%) percent or more of the corporation where 25% or more of the plan contributions are for the benefit of the "owner-manager".

This proposed limitation is obviously directed against the "professional corporation". However, the Senate Finance Committee's "shotgun approach" hits every small business corporation in the country. The ultimate impact of this proposal, if it ever becomes law, could absolutely freeze the growth of the private pension system in the entire small business sector. Small companies without retirement plans will be discouraged from adopting new plans and those that already have retirement plans will be required to substantially cut back the benefits provided thereunder, or possibly to terminate their plans outright. Certainly, it cannot be the intent of our government to so impede the growth of the private retirement system.

We feel that the Finance Committee's proposal should be removed from the Bill for the following reasons:

1. The retirement pension benefit that can be purchased with a contribution of 15% of wages (maximum $7,500) is not adequate for those older workers. (age 45 and over)

2. Considering the ever present inflation which our country is experiencing and can be expected to experience in the future, what appears to be a reasonable retirement benefit in terms of today's value of the dollar may be wholly inadequate in terms of the value of the dollar at the time of retirement. Larger pension benefits should therefore be encouraged and not restricted.

3. The contribution restriction which the proposal advocates applies only to the small business corporation. It leaves the pension benefits of the executives of large publicly owned corporations virtually unlimited. This is clearly discriminatory against the small businessman.

Out of the hundreds of retirement plans our firm has worked with, less than ten (10%) percent involve "professional corporation" plans. The great bulk of the plans we work with cover employers in non professional type businesses. (i.e. small manufacturers, tool & die shops, construction companies, etc.)

In order to illustrate the impact of this proposal on existing small business corporation retirement plans, we have taken a sampling of 5 different retirement plans administered by our firm, and have illustrated the cut back in benefits and contributions that can be expected under the Senate Finance Committee proposal. While the cut backs illustrated are required to be applied only to the "owner-manager" employees, we believe that all rank and file employee pension benefits will be correspondingly reduced right along with the owner-manager's benefits. Human nature being what it is, it is most unlikely to expect that the employees' benefits will be provided under a more generous formula than is applicable to the boss's benefits.

Respectfully yours,

MOSKAL, JARAS, RICCHETTI & ASSOCIATES, INC.

P.S. We have also enclosed herewith our "Position Report" which contains a brief summary of other objections to the Senate Finance Committee proposal.

SMALL CORPORATION PENSION PLAN (NAME OMITTED) COMPARISON OF PLAN COSTS AND BENEFITS BEFORE AND AFTER SENATE FINANCE COMMITTEE CONTRIBUTION RESTRICTION

Participants	Entry age	Retirement age	Annual salary	Under present law: Company contribution	Under present law: Monthly pension [1]	After finance committee contribution restriction: Company contribution	After finance committee contribution restriction: Monthly pension [1]
Funeral home:							
Owner-manager	56	69	$26,352	$5,536	$593	$3,953	$423
Employee No. 1	25	65	11,436	430	116	307	119
Employee No. 2	43	65	12,024	1,053	181	752	129
Employee No. 3	43	65	11,424	859	166	613	119
Employee No. 4							
Employee No. 5							
Total company contribution				7,878		5,625	
Lithography—printing:							
Owner-manager	55	65	50,000	9,324	666	7,500	536
Employee No. 1	51	65	17,169	1,390	133	1,117	107
Employee No. 2	34	65	15,717	318	93	256	75
Employee No. 3	34	65	17,644	480	142	386	114
Employee No. 4	37	65	19,126	642	165	516	133
Employee No. 5	32	65	14,989	303	97	243	78
Balance of covered employees				5,518		4,436	
Total company contribution				17,975		14,454	
Machine shop—jobber:							
Owner-manager	44	65	26,000	4,788	821	3,900	669
Employee No. 1	25	65	8,772	326	135	266	110
Employee No. 2	36	65	7,044	492	142	401	116
Employee No. 3							
Employee No. 4							
Employee No. 5							
Total company contribution				5,606		4,576	
Construction industry—general contractor:							
Owner-manager	50	65	50,800	15,136	1,614	7,500	800
Employee No. 1	38	65	20,117	2,460		1,219	284
Employee No. 2	24	65	9,291	356		176	74
Employee No. 3	30	65	7,894	312		155	42
Employee No. 4	37	65	5,742	270		134	32
Employee No. 5	28	65	8,403	329		163	59
Balance of covered employees				2,685		1,330	
Total, company cobtribution				21,548		10,677	
Wholesaler—screw products:							
Owner-manager	64	74	25,000	13,626	900	3,750	243
Employee No. 1	24	65	9,948	726	290	196	78
Employee No. 2	44	65	15,600	2,850	465	770	123
Employee No. 3	33	65	17,904	1,859	522	502	141
Employee No. 4	34	65	8,580	937	250	253	68
Employee No. 5	20	65	6,864	442	200	119	54
Employee No. 6	50	65	5,928	1,733	173	468	47
Total company contribution				22,173		6,058	

[1] Per month.

[2] All employee benefits were proportionately reduced to correspond with the reduction required in connection with the "owner-manager" benefits.

The Presiding Officer. Who yields time?

Do Senators yield back their time on the amendment?

Mr. Nelson. Mr. President, I yield back the remainder of my time. How much time does the other side have?

The Presiding Officer. Thirteen minutes remain.

Mr. Hansen. Mr. President, we yield back our time on this side.

The Presiding Officer. All time on this amendment has now been yielded back.

The question is on agreeing to the amendment No. 506 of the Senator from Wisconsin (Mr. Nelson), as modified.

On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. Robert C. Byrd. I announce that the Senator from Alaska (Mr. Gravel), the Senator from Michigan (Mr. Hart), the Senator from Louisiana (Mr. Long), and the Senator from Montana (Mr. Metcalf) are necessarily absent.

Mr. Griffin. I announce that the Senator from Oklahoma (Mr. Bellmon), and the Senator from Kansas (Mr. Pearson) are absent because of illness.

I also announce that the Senator from Arizona (Mr. Goldwater), and Senator from Ohio (Mr. Saxbe), are necessarily absent.

I further announce the Senator from Utah (Mr. Bennett) is absent on official business.

The result was announced—yeas 89, nays 2, as follows:

[No. 396 Leg.]

YEAS—89

Abourezk	Fong	Moss
Aiken	Fulbright	Muskie
Allen	Griffin	Nelson
Baker	Gurney	Nunn
Bartlett	Hansen	Packwood
Bayh	Hartke	Pastore
Beall	Haskell	Pell
Bentsen	Hatfield	Percy
Bible	Hathaway	Proxmire
Biden	Helms	Randolph
Brock	Hollings	Ribicoff
Brooke	Hruska	Roth
Burdick	Huddleston	Schweiker
Byrd, Harry F., Jr.	Hughes	Scott, Pa.
Byrd, Robert C.	Humphrey	Scott, Va.
Cannon	Inouye	Sparkman
Case	Jackson	Stafford
Chiles	Javits	Stennis
Church	Johnston	Stevens
Clark	Kennedy	Stevenson
Cook	Magnuson	Symington
Cotton	Mansfield	Taft
Cranston	Mathias	Talmadge
Curtis	McClellan	Thurmond
Dole	McClure	Tower
Domenici	McGee	Tunney
Dominick	McGovern	Weicker
Eagleton	McIntyre	Williams
Eastland	Mondale	Young
Ervin	Montoya	

NAYS—2

Buckley	Fannin

NOT VOTING—9

Bellmon	Gravel	Metcalf
Bennett	Hart	Pearson
Goldwater	Long	Saxbe

So Mr. Nelson's amendment No. 506, as modified, was agreed to.

Mr. JAVITS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. THURMOND. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

* * * * * * *

RETIREMENT INCOME SECURITY FOR EMPLOYEES ACT

The Senate continued with the consideration of the bill (S. 4) to strengthen and improve the protections and interests of participants and beneficiaries of employee pension and welfare benefit plans.

The PRESIDING OFFICER. Pursuant to the previous order, the Senator from Washington is recognized.

Mr. JACKSON. Mr. President, I call up my unprinted amendment.

Mr. CURTIS. Mr. President, may we have order?

The PRESIDING OFFICER. The Senator will suspend. The Senate will be in order. The Senator from Washington has the floor and deserves to be heard. Senators will please be seated.

The amendment will be stated.

The assistant legislative clerk read as follows:

On page 19 of Amendment 496 strike lines 3 through 12 and insert the following:

(2) EMPLOYER CONTRIBUTIONS.—

(A) NONFORFEITURE PERCENTAGE.—A plan satisfies the requirements of this paragraph if under the plan, after one continuous year of service with an employer, an employee has a right to a percentage of his accrued benefit derived from employer contributions which is nonforfeitable other than by reason of death. The percentage shall not be less than the percentage determined under the following table:

Years of service	*Nonforfeitable percentage*
1 through 5	25
6	30
7	35
8	40
9	45
10	50
11	60
12	70
13	80
14	90
15 or more	100

On page 75, on line 22 add:

An employer may register a qualified plan under this section with respect to less than all of his employees who are participants in that qualified plan if the group of employees is reasonably defined and the employer demonstrates with respect to that group of employees that maintaining records of plan participation for members of the group after their termination from the plan would

be unreasonably burdensome in relation to the liability of the plan to members of the group.

On page 76, line 6 add:

The Corporation shall also accept for deposit into the fund any payment made from the assets of a qualified plan by and at the request of the administrator of that plan if the payment is made by a plan registered under the second sentence of section 305(c) to avoid unreasonably burdensome administrative expenses of maintaining plan participation records for terminated participants. Such payment shall discharge the existing liability of the plan to the participant with respect to the participation for which the payment was made, provided, that the plan shall be liable to the participant with respect to the participation for which the payment was made for the value of subsequent increments in the percentage of vesting of that participation.

Mr. JACKSON. Mr. President, I ask unanimous consent that Joel Merkel and Marian Troyer of my staff be accorded the privilege of the floor during the consideration of the pending measure.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JACKSON. Mr. President, I yield to the distinguished Senator from Vermont.

Mr. STAFFORD. Mr. President, if I might have the attention of the manager of the bill, I would like to address this question to the Senator from Wisconsin.

In relation to the $7,500 or 15 percent limit on tax deferrable contributions to qualified pension plans by corporate stockholder-employees. I would appreciate knowing from the Senator from Wisconsin if this corporate stockholder-employee, who is on salary like the other employees and makes specified contributions to the same pension plan as his other employees, would be eligible to use the tax deferrable deduction when the corporation of which he is a stockholder does not show a profit or sufficient profit to cover the 15-percent limit as amendment No. 497 is now written?

Mr. NELSON. The answer is an unqualified yes.

Mr. JACKSON. Mr. President, I yield to the Senator from Illinois and I would like to have the time taken from the bill.

Mr. PERCY. Three minutes on the bill.

Mr. JACKSON. I will give him 3 minutes out of my time.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. PERCY. I thank my distinguished colleague from Washington. I shall be very brief.

Mr. President, I want to commend the members of both the Senate Finance Committee and the Senate Labor and Public Welfare Committee for the cooperation which has obviously marked the development of this legislation. Through the combination of some of the best thinking in the Senate in this area, a highly commendable pension reform package has emerged.

As an original cosponsor of the Retirement Income Security for Employees Act, introduced in this Congress as S. 4, I was very concerned that an adequate and effective administrative and enforcement mechanism be established to protect employees and pension beneficiaries.

My colleagues have no doubt heard of the case of the Elgin Watch Co. in Elgin, Ill., where ineffective enforcement of existing pension tax law has resulted in meager pensions for Elgin's retirees and the possibility of a tax-free bonanza for the reorganized Elgin Corp., which has since moved to another State. These events left me firmly convinced that our existing enforcement mechanism is inadequate, and

I am pleased to say that I believe this compromise legislation will remedy this situation. The creation of a new Office of Employee Plans and Exempt Organizations within the Treasury Department and a new Office of Pension and Welfare Plan Administration within the Department of Labor will assure effective enforcement of both our pension tax laws and employee rights.

My own experience in business demonstrated to me the high incidence of discrimination against the employee who for one reason or another moves from one job to another. Our increasing mobility has made the presentation of a gold watch for 50 years of service obsolete. Without realistic vesting standards and the ability to transfer a pension fund from one job to another, most of today's employees will not be able to provide adequately for their retirement.

When I testified before the Senate Subcommittee on Aging in July of 1971, I stressed my own belief that full vesting should occur in a maximum of 10 years. Although this legislation provides for a maximum work period of 15 years, I understand the concern of the bills' authors that the expansion of pension plans not be discouraged, and that additional financial burdens not be suddenly imposed on employers. I will, however, work in the future for legislation to decrease this maximum period for full vesting to 10 years.

We hear almost daily of cases where persons who looked forward to a secure retirement face situations of despair when they lose their pensions or receive far less than they had anticipated. Mr. President, this legislation will protect the rights of over 31 million workers in the United States. I urge the same spirit of cooperation and common dedication in the House of Representatives that we have witnessed here in the Senate so that a truly effective pension reform package can be adopted during this session of Congress. We owe no less to today's employees and tomorrow's retirees.

Mr. President, if anyone feels that 15-year 100-percent vesting is too liberal, I can point out from personal knowledge that an $80 million pension fund with vesting for 10 years at 10 percent a year has worked out very well for the past 25 years. In addition, for 50 years Sears, Roebuck has vested for 5 years at 20 percent a year. They have no fear of giving flexibility to employees and the corporation. That pension is earned and it should be portable. Employees should not be required to stay in one company until they are 65 years of age.

This measure will move us in a giant step toward equity and fairness both toward employers and employees in this country. I commend my distinguished colleagues for their brilliant leadership in this field.

Mr. JAVITS. Mr. President, will the Senator yield?

Mr. NELSON. I yield.

Mr. JAVITS. Mr. President, I thank the Senator from Illinois for his fine words. This has been a long struggle for all of us who have been deeply engaged. I wish to thank the Senator for the expert witness he makes as a result of his enormous and successful experience as the head of one of our most successful corporations.

Mr. JACKSON. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. JACKSON. Mr. President, was my amendment reported.

The PRESIDING OFFICER. The amendment has been reported.

Mr. Jackson. Mr. President, on Monday I introduced my amendment number 488 to amend the vesting schedule of S. 4 to provide for earlier minimum vesting of pension benefits. I now call up a similar version of this amendment modified to reflect changes in the Senate Labor and Finance Committee compromise pension bill. My amendment would improve the vesting schedule of S. 4 by providing for 25 percent vesting of all pension credits from the 1st through the 5th year of participation in covered employment. The graded vesting schedule of S. 4 from the 6th through the 15th year is not affected. Minimum vesting is merely pushed back to the end of the first year of plan participation instead of the end of the fifth year.

I have also added a provision to allow pension plan administrators to transfer to the Portability Corporation the value of a terminated employee's participation in a pension plan if the employer can demonstrate that it would involve unreasonable administrative expenses in relation to the plan's liability to a worker to maintain records of his participation after his termination from the plan.

The lengthy study by the Senate Labor and Finance Committees on pension reform has demonstrated beyond doubt that the reasonable expectations of employees upon reaching retirement age fail to materialize in most instances. There are over 34 million workers participating in private pension plans. Statistics indicate that only 22 percent of such participants receive all the pension benefits which they have earned and which are rightfully theirs. The single most important reason for this shocking statistic is that unrealistic vesting standards often prevent the accrued pension credits of a worker from ever vesting.

A high degree of job mobility has become increasingly characteristic of our labor force. With high mobility it is impossible to adequately protect pension rights without early vesting. The economic success of this Nation and its high living standard is in large part the result of the mobility and adaptability of our labor force. And yet, these same workers—engineers, teachers, medical and laboratory workers, and many others—who contribute so greatly to our economic success are penalized when it comes to their pension rights because of the nature and demands of their employment.

A perfect example of how the highly mobile worker is injured by frequent job turnovers occurred in my home State of Washington. The Boeing Co. in Seattle terminated over 66,000 workers between 1969 and 1971 because of a decreased demand for commercial aircraft. Over 42,000 of the 66,000 employees terminated had been employed less than 5 years. Under the vesting schedule of S. 4, all of the accrued but unvested pension credits of these 42,000 workers would be permanently lost. I believe that a situation like this is just plain wrong and ought to be corrected. My amendment would correct this injustice by permitting a worker to preserve his earned but presently unvested credits. Without my amendment, mobile workers will continue to face the prospect of being left out in the cold in their retirement years.

The millions of highly mobile workers in America want and need early vesting. For example, I was pleased to note the following testimony of the National Society of Professional Engineers before the Senate Labor Committee:

Vesting is really at the heart of the pension problem. For the engineer, whose life style of necessity . . . is one of high mobility and fast changing technological obsolescence, the results are predictable. The engineer is unable, in many cases, to stay at one place or with one employer long enough to accumulate any vested pension credits. . . . Engineers strongly favor immediate vesting. Then there would never be any lapse in the accumulative process.

Ultimately, early vesting or some similar means of preserving pension credits is the solution to the high mobility problem. I believe that S. 4 should address this question now rather than wait years for another pension reform bill to come along. I do not suggest that my amendment is the ultimate solution to high labor mobility. Indeed my amendment provides for a modest improvement in vesting. But it is a proposal that addresses the problem of high mobility in a positive way now. I believe it is important that S. 4 contain such a provision and I hope the Senate will adopt this amendment.

Mr. PASTORE. Mr. President, will the Senator yield?

Mr. JACKSON. I yield.

Mr. PASTORE. Does this amendment on vesting apply to Government workers who have been involuntarily separated because of the closing of a base?

Mr. JACKSON. The answer would be "No," because the bill here, as I understand it, addresses itself only to the private sector.

Mr. PASTORE. Does not the Senator think, if we are going to be fair, we ought to include them here? I mean, what is the difference?

Mr. JACKSON. Yes; I think there ought to be a separate title to deal with that problem, but I would say it is my understanding that civil service pension rights, of course, can later be picked up. Government employees do not lose the 1 year or the 1 month that they put into a Government retirement program. They later have to get 5 years, but they do not forfeit, as they do now in the private sector, the money that has been set aside. Government pensions are protected, I believe.

Mr. PASTORE. But the practical result, as I understand it—and the Senator put his finger on it, because we cannot prove it—is that when a person has worked a number of years, let us say, either for the Government or for private industry, and he loses his job and he seeks another job, one of the impediments to his being hired is the fact that for some reason, the matter of pension cost to the company is a deterrent in hiring that person in another task. But if we had the assurance that he carried, as a vested right, the former pension earned while working in the former job, it might alleviate the hardship of becoming engaged in a new industry.

We spend a great deal of money retraining, and after we retrain them, there is a reluctance to hire them because of that particular factor.

Mr. JACKSON. Let me give two particular examples. An employee is employed in a private plant. Under this bill, if he does not have more than 7-years' service, he does not have any vested right to the pension benefits he has accrued.

Mr. PASTORE. That applies even to Government workers.

Mr. JACKSON. No, no; there is a difference.

Mr. PASTORE. Yes.

Mr. JACKSON. I will stand corrected if I am wrong, but I believe, to be eligible for a civil service annuity at age 62, one must have 5-

years' service. But suppose an individual served only a year. He can later go back to the Government. That 1-year's payment remains in his account unless he draws it out. He has a right to draw it out. But that 1-year's payment remains in his fund, and before age 62, or before retirement, if he can get the 5 years, he is eligible for the annuity.

Under this bill, in the private sector he would not be eligible to get the annuity, nor would he be eligible to move the 1 year or 2 years—anything less than 5 years—to another program. But one can do it under the Government program. He can take the first 5 years and move it into another part of the Government program.

Mr. PASTORE. I think we should hear from the manager of the bill. I think there is an ambiguity. I do not want to suffer any disadvantage. It strikes me that if an inequity is being perpetrated upon one who works for the Government, and he does not have a pension right—if he has a vested right and he can cash it in, there may be a reason for that—I would prefer to have him carry it along with him, because it may be easier for him to get a new job.

Mr. JACKSON. I am sympathetic with that.

I would like to be corrected if I am wrong on my interpretation of the civil service annuity provisions.

Mr. PASTORE. I would like to hear from the managers of the bill.

Mr. WILLIAMS. Mr. President, let me understand exactly what the question is. Are we talking about private employment, where an employee works for less than 5 years for a company and leaves the company? He has not established a vested right under this legislation. Now the Senator is suggesting that he comes back at a later time to the same company?

Mr. PASTORE. No; as I understood the Senator from Washington, he gave the case of the Boeing Co. in the State of Washington. He says that if a person worked for that company for 3 years, and for some reason, because they had no further work, they laid him off, his amendment would give him the right to carry his 3 years to his next employment. Is that correct?

Mr. JACKSON. He would have a vested right to a percentage of his accrued pension benefits which he could not be deprived of.

Mr. PASTORE. I have raised a question. I took the example of a person working at Quonset Point for the Government, and after 3 years he was laid off. What happens to him?

Mr. JACKSON. The question is——

Mr. PASTORE. No; I stated the question. I would like to get an answer.

Mr. JACKSON. Mr. President, is he going to work in the private or Federal sector?

Mr. PASTORE. He goes on to a private job or any job. He has been working for the Federal Government. If we are going to make it apply to some, I do not know why we should not apply it to the Government employee who lost his job through no fault of his own and then tried to get another job. What happens to him?

Mr. JACKSON. The Quonset Point employee has a vested right for the time he served.

Mr. PASTORE. Under the Senator's amendment?

Mr. JACKSON. No; under the existing law. His money stays in the civil service retirement unless he draws it out. However, in the private sector there is no vesting. He loses everything up to the first 5 years.

Mr. PASTORE. I understand the Federal law, that if one works for the Government, he has to work for the Federal Government 5 years before he has any rights under retirement.

Mr. JACKSON. The Senator is correct.

Mr. PASTORE. All right. I am talking about what happens after 3 years.

Mr. JACKSON. If he goes back to the Federal Government later and gets 5 years of employment, he is eligible for a pension.

Mr. PASTORE. What if he does not go back to the Government? What if he goes to Boeing?

Mr. JACKSON. Then he gets his money back.

Mr. PASTORE. I think it is unfair.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. WILLIAMS. Mr. President, I yield myself 5 minutes and yield to the Senator from Texas.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mr. BENTSEN. Mr. President, innumerable vesting and funding proposals were presented to our committee. Some of these proposals provided faster vesting than the amendment of the Senator from Washington. What we had to balance off as far as we could was the desire to protect employee pension rights without deterring the establishment of new pension plans.

This is what we think we have accomplished. We have not drawn the ideal pension plan. If we tried to do that, I think there would be 100 versions of what one considers to be the ideal plan. In addition, we would find many employers who would be reluctant to put in new plans.

We have to remember that these are voluntary pension plans on the part of the employer. And one of the motivating reasons for putting in the plans is that employers want the employees to stay with them for a while, because they are going to spend money training those employees, as the Senator from Rhode Island said.

Then, we have to also look at the fact that if we require very early vesting, that means that the employer has to allocate more of his pension contributions to younger employees who have a higher turnover rate. As a result the older employees will be penalized. That will be the net result. More of the pension fund, under this kind of amendment, would be going to the younger employees who do not stay too long at their job, and it will be taken away from the older employees who do stay with the company.

Mr. CURTIS. Mr. President, will the Senator yield?

Mr. BENTSEN. Mr. President, I yield to the Senator from Nebraska.

Mr. CURTIS. Is it not true that if vesting is given to someone who has worked for as short a time as 1 year, it will be costly and additionally burdensome from the standpoint of the administration of the plan?

Mr. BENTSEN. That is another cost that is added on in that situation. The Senator is correct.

Mr. CURTIS. Mr. President, is it not also true that we would not be helping him very much?

Mr. BENTSEN. He is not going to have earned a substantial benefit after only 1 year. It would be a very small amount of money.

Mr. CURTIS. These plans are instituted for the purpose of building up a sum of money in the retirement fund. So the amount in the retirement would be rather small. But under this amendment, he would be entitled to 25 percent of it.

We should not confuse the need for retirement with the need for continued employment or unemployment compensation. They are two different problems.

Mr. BENTSEN. Mr. President, I agree with the distinguished Senator. Let me say that both the Labor and Public Welfare Committee and the Finance Committee looked at proposals to provide vesting formulas earlier than 5 years. Both committees turned these proposals down. The Labor and Public Welfare Committee approved a bill which did not provide vesting until after 8 years. The Finance Committee had 5 years. We have taken the more liberal of the two options decided on by the committees.

Mr. PASTORE. Mr. President, will the Senator yield?

Mr. BENTSEN. I yield.

Mr. PASTORE. Mr. President, would the Senator from Texas make a distinction between voluntary and involuntary separation? The Senator is actually talking about shiftless workers. I am talking about men who have been on the job and after some years, through no fault of their own, they are laid off and involuntarily separated from their jobs. Where are their rights? I am not talking about shiftless workers. I am talking about legitimate people who want to work, but who lose their jobs through no fault of their own. What do we do for them?

Mr. BENTSEN. I agree that this one piece of legislation does not resolve all inequities. However, we have taken a great step forward in pension reform.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. JACKSON. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator from Washington has 14 minutes remaining.

Mr. NELSON. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator from Wisconsin has 22 minutes remaining.

Mr. BENTSEN. Mr. President, I yield to the Senator from Rhode Island.

Mr. PASTORE. Mr. President, of course, I am not prepared to solve this question on the floor of the Senate. I realize that many of the amendments arrived at on the floor concerning this very important legislation will confuse many Members of the Congress. However, as long as we admit that there are inequities here, I would like to have some assurance that this matter will be looked into, and it should be looked into. I repeat that I am not talking so much of those who leave a job voluntarily and then get another job and go here and there. I know that it makes it most difficult for the employer.

I am talking about people who want to have a job and who lose their job through no fault of their own.

Mr. BENTSEN. Mr. President, I want to say in answer to the distinguished Senator that this will be a very important piece of reform leg-

islation it we are able to get it enacted. And I am sure that in the future we will be looking at additional inequities and trying to correct some of them.

The PRESIDING OFFICER. Who yields time?

Mr. JACKSON. Mr. President, I yield 3 minutes to the Senator from Indiana.

The PRESIDING OFFICER. The Senator from Indiana is recognized for 3 minutes.

Mr. HARTKE. Mr. President, the Senator from Rhode Island says that this should be looked into. It has been looked into by the Labor and Public Welfare Committee. They have a report which I would be glad to show the Senator. That report demonstrates the very figure that the Senator is talking about under the present system. The Senator from Washington is attempting to provide for some type of vested interest after the money is taken out of his paycheck. It is his money, and not the employer's money. If he has some of his money in a pension plan, he ought to have a right to have a claim on the pension which he thinks he ultimately will get. At the present time he loses that money.

The pending bill places in effect all of the inequities the Senator is talking about. The Senator from Washington is trying to make a small step forward. I would go a great deal further than he would, quite honestly.

What is being done today? The Labor and Public Welfare Committee study shows that only 4 percent of the people of the United States are in a pension plan. And of 6,900,000 people in the plans, 6 million people never get a penny. That is what is wrong with the bill. This bill stamps the approval of Congress on the status quo. And the people in the marketplace are complaining about that. They are using their money and not the employers' money. The employer takes the employee's money out of his paycheck.

Let me refer to the system the teachers of the country have. Throughout this Nation, if we do what the teachers are doing, we will be much further along than what the Senator from Washington is talking about. The teacher pays for the first year. If a teacher then leaves the job or is fired, or whatever happens, that cannot be forfeited.

I think the Senator from Washington has made a good step forward. I do not see how anyone can be against it, except that they are complaining about the cost. Do not be misled on that feature: The difference between the cost of the bill with and without the amendment of the Senator from Washington is much less than with the one I have, and the one I have is only 0.2 percent of the payroll. So in cost it is minuscule, and the benefit would be great in proportion. It is a good amendment.

Mr. JACKSON. I thank the Senator.

Mr. President, I should like to modify the amendment so that, on the first page, where the table "Years of Service" appears, by adding under that item the following line: "1 through 4, on involuntary termination from the pension plan," and then the figure "25 percent." That would be in lieu of line 1.

It would cover the basic objective here that for the first 5 years it would apply only where involuntarily separated.

Mr. NELSON. Did I understand the Senator to say "involuntarily separated from the pension plan"?

Mr. JACKSON. Yes. It means the same thing.

Mr. NELSON. No, he would have to be in long enough to be covered by the pension plan to be separated from the pension plan.

The PRESIDING OFFICER. The clerk will state the modification.

Mr. JACKSON. Well, it should be "involuntarily separated from participation." I will modify it further to that extent. If the clerk will do that, "involuntarily separated from participation in the pension plan."

The assistant legislative clerk read the modified amendment as follows:

On page 19 strike lines 3 through 12 and insert the following:

(2) EMPLOYER CONTRIBUTIONS.—

(A) NONFORFEITABLE PERCENTAGE.—A plan satisfies the requirements of this paragraph if under the plan, after one continuous year of service with an employer, an employee has a right to a percentage of his accrued benefit derived from employer contributions which is nonforfeitable other than by reason of death. The percentage shall not be less than the percentage determined under the following table:

Years of service:	*Nonforfeitable percentage*
1 through 4 upon involuntary termination from participation in the pension plan	25
6	30
7	35
8	40
9	45
10	50
11	60
12	70
13	80
14	90
15 or more	100

The PRESIDING OFFICER. The amendment will be so modified. Who yields time?

Mr. JAVITS. Mr. President, will the Senator yield me 5 minutes in opposition to the amendment?

Mr. NELSON. I yield 5 minutes to the Senator from New York.

Mr. JAVITS. Mr. President, I oppose this amendment.

The amendment gives us an opportunity to determine what really is the heart of this bill. Two important aspects of it have been mentioned. One is the statement by Senator Hartke "taking the money out of his paycheck," and the other is Senator Jackson's very understandable and very proper plea for the special situation which affects engineers, like those at Boeing, who are separated from employment because of some decision of the United States or the phaseout of weapons——

Mr. JACKSON. Mr. President, will the Senator yield? This is all commercial business. This was the phaseout of the economy from 1969 through 1973.

Mr. JAVITS. Mr. President, I do not appreciate the interruption. If the Senator would follow the rules of the Senate, I would be happy to yield to him in a moment.

I said exactly what I meant. Boeing is a proper example. Engineers lost their jobs because the United States went to some other engineering program, or buyers did not buy the product, or whatever the case might be. In any case, they lost their jobs, were separated, or in some other way found themselves outside of Boeing's pension plan.

Let us look at the first case: "taking the money out of his paycheck." Anyone who has ever negotiated a labor contract knows that there are two parties on it. The employer has an interest in keeping the man on the job, and he is willing to pay something to keep a man on the job that he will not pay in hourly pay. That is why we have strikes involving pension plans, because the employer also has an interest. He wants a certain number of years of service, and he is paying more for that. That is why he does not put it in the paycheck.

Second, there is a problem about employees whose work phases out, or because of some act of God, act of nature, or act of the U.S. Government, they are out of a job before they can vest.

That, for example, is why we have severance pay. That is a very different concept than vested pensions. The latter is a provision for retirement income. But we have lots of different kinds of payments. We have bonuses for production, if you produce over a certain minimum. We have profit-sharing. And we also have pension plans, severance pay, and other forms of fringe benefits.

Our bill takes account of that situation, and it also takes account of the problems of high mobility workers—such as engineers—because among other things, it calls upon the Secretary of Labor—I refer to page 70 of the bill, section 282 to—

> develop, in consultation with appropriate professional societies, business organizations, and heads of interested Federal departments and procurement agencies, recommendations for modifications of Federal procurement regulations—

This, of course, was intended to authorize the development of more adequate standards of protection against high forfeitures by aerospace scientists and engineers, as well as others similarly situated. This initiative—which I outlined—was designed to meet a unique problem. But it should be realized that pensions are not severance benefits, and we cannot let the problems of high mobility workers dictate maximum standards on vesting for everyone, when what we are doing is setting the minimum floor respecting vesting.

If an employer wants to do better by his employees, there is nothing to stop him under this bill. But to take the whole bill and change it over to the system which the Senator from Washington wants to change it over to will result in doing the following:

First, we will discourage, not encourage, the establishment of pension plans, and the whole theory upon which I, Senator Williams and others based our efforts was that we wanted more than 30 million workers covered. We want to encourage pension plans, and to encourage them you have to give the employer some little break, too. That means some continuity of employment.

Second, there is a law known as de minimis. How much is a man going to vest if he has 1 year's service? How much will he get out of his pension? By the time you get through keeping all those records and certifying them to the Secretary of Labor and the Social Security

Administration, and paying them out as \$1.89 checks, you will wish you had never heard of pension plans, and every employer knows that, just as I have stated.

So, for the practical reasons I have stated and those which have been argued by the Senator from Texas, we had to arrive at some kind of standard of vesting which made sense in the light of all those considerations.

The PRESIDING OFFICER. The Senator's time is expired.

Mr. JAVITS. I yield myself another 5 minutes on the bill.

Now, Mr. President, as Senator Bentsen has said, this is by no means the ultimate end product. The Senator from Indiana (Mr. Hartke) has properly referred to the teachers' plan. It is a marvelous, successful pension plan, and there is no question about it. Apart from the fact that it deals with governmental entities, it includes private colleges, universities, and other organizations as employers, and that plan has gone on now since World War I. It is 50 years old.

I hazard a guess that we can improve the standards substantially when we have had 50 years of experience under this first reform in this whole field. After all, all the geniuses we heard on this subject did not think of coming in with what we are coming in with now, for all those years, until one of us came along and dreamed it up. Now we are doing something about it, and you have to give us a chance, too, to see how this thing works.

There is one other thing, and that is the continuity of employment. I think 5 years, for openers, is a very reasonable period within which to begin to vest. As a matter of fact, after all our investigation for the Committee on Labor and Public Welfare, we came to the conclusion that 8 years was a good starting period, though we started at a higher figure than 25 percent. But we accept the 5-year standard also.

I might say that, much as I deprecate the figures which represent pension realization now, they are not as low as those cited by Senator Hartke. We spent a million dollars of the money the Senate gave us to investigate that, and the correct figure is approximately 16 percent qualified for benefits in the plans studied. That is no bargain, but it is 4 times 4 percent.

As to continuity of service, if Senators will refer to page 19, line 6, they will see that of the 5 years of service, the bill only calls for 3 that are consecutive. In addition, we have another provision that provides that if any employee returns to the same employer or employers contributing to the pension plan—he does not lose credit for his aggregate years of service.

When you tie together all the things that we have gone through and argued, both Senator Bensten and myself, with the insurance factor which is being put into the bill and with the fact that we are requiring vesting in State and local government plans and plans of tax-exempt organizations, we respectfully submit to our colleagues that we have gone about as far as we can go in all honesty and decency as to the terms. As I say, this is the first time any effort has been made in this field and we believe, to push the matter further, would break the camel's back in the sense of the effort to inaugurate a massive reform at this particular time.

Mr. PASTORE. Mr. President, will the Senator from New York yield?

Mr. JAVITS. I yield.

Mr. PASTORE. Well, the Senator from New York has made a practical dissertation of his point of view and I applaud him for it. I do not seek to refute it in any way but merely would say that he speaks about severance pay and that is allowable even to those who have worked after 5 years. We talk about unemployment compensation and even those who work more than 5 years are entitled to unemployment compensation if they lose their job. But they have a vested interest in a retirement pension plan.

All we are saying is that there may be instances, and there are instances, of inequities so far as the people who, through no fault of their own, lose their jobs after 59 months and 10 days. In that case they are placed in a different position from someone who has held a job for 5 years and 1 day.

I would hope and I repeat, that the inequities will be studied throughly. What we are talking about is more cost than we are talking about equity. I would hope that we would put equity before cost.

Mr. JACKSON. Mr. President, will the Senator from New York yield?

Mr. JAVITS. I yield.

Mr. JACKSON. First, as I attempted to indicate earlier in my statement, I made it clear, in the example I gave, of the 66,000 employees being laid off at Boeing, that that was not a cutback of defense work. As the Senator is aware, at its peak, Boeing had 106,000 employees with over 90,000 engaged in commercial work. The layoff of 66,000 employees were those engaged in commercial employment. They got stuck with the business cycle. Starting in 1969, the airlines got into economic trouble and canceled orders. That is what the layoff was all about. It had nothing to do with any cutback in defense work.

The Boeing company in the State of Washington had a smaller percentage of defense work than any major aerospace company. So I want the record to show that.

The other point I want to make is that I want to commend Senators Williams and Long for getting the best bill which in their judgment could be obtained, and I say that to the ranking minority member on the Committee on Labor and Public Welfare, the Senator from New York (Mr. Javits); but I must say that there is absolutely no logic to the argument that somehow or other we must start vesting only after 5 years. I see no logic in the contention that we must arbitrarily require 5 years of service.

I know that there are cost factors involved but one of the great problems we face in the labor force, and this is especially true in the skilled trades and professions not just in engineers alone, but for all highly skilled workers, these workers are becoming more and more mobile. They move from place to place. I must say that this is a matter that disturbs me greatly. The Senator has the same problem in New York, of engineers being laid off. After a short period of service, they go to another place. That is true of other skilled employees all over the United States.

The Federal Government, in its retirement program, permits a Federal employee who had less than 5 years service to keep the accrued

pension benefits. It is true that in order to get an annuity, he must have served 5 years, but he does not forfeit the 1 year, 2 years, 3 years, or 4 years he has paid. All of us know that we frequently have people coming to Washington wanting jobs because they have had 4 years in Government service. They want to work 2 or 3 years to qualify for and obtain annuities.

So they have a tremendous advantage over an employee in the private sector who cannot preserve his short-term pension credits. My amendment is, I think, not unreasonable or arbitrary; I think it is completely logical. There ought to be vesting for those who are in the highly mobile category.

Mr. JAVITS. Mr. President, I yield myself 1 additional minute, then I shall have concluded.

I think the various points of view on vesting have been accurately stated. However, whatever the situation of a single employer, we are talking about an enormous diversity of employers. We are talking about making vesting apply nationwide without going the route of social security. We are going the route of private enterprise, which we think will work out infinitely better. So both the employer and the employee will have a system for the future. So we lay that argument before the Senate as the reason why we feel our route is better.

I urge the Senate to reject the amendment.

Mr. BENTSEN. Mr. President, I used to sell pension plans. Whom do you sell them to? To all kinds of companies. One of the reasons why employers establish pension plans is to encourage employees to remain with the company. But it is necessary to balance this off with a reasonable vesting formula, so that the employee does not become a slave or a chattel. That is the balance we have tried to achieve.

I do not think the Senator has offered an outrageous amendment. I think it is reasonable. We have already achieved that balance, and it will not act as a deterrent to the creation of new plans.

Again I say that the committee formula is a good one. I think we have an excellent bill. I hope that it will be passed.

Mr. JACKSON. Mr. President, I yield myself such time as I may require.

I appreciate the very fine statement of the able Senator from Texas. But we have a great many kinds of pension plans. Let us face it. Many of them have not been so good. One of the great tragedies I have to face is people coming to me who had 30 years of service, but they needed 32. They lost everything.

The committee, as I understand it, believes that this bill will bridge the bulk of that gap. But there is no logical reason why people who are mobile, by reason of their profession or their essentially high skilled trades, should be treated differently when they have served 4 years and then move to a different situation. There are people who are in the construction business who move from one location and work for a different contractor under a different pension plan. We want a highly mobile labor force. This is part of the genius of the American free enterprise system.

The bill sets the first 5 years as an exclusion. I have applied the first 5 years, under my modified amendment, only to those who are involun-

tarily separated—laid off. So we have made an adjustment as to the first 5 years.

I now yield to the Senator from Indiana.

Mr. Hartke. Mr. President, what the Senator does, after he adds 5 years, does not modify the provisions of the bill before the Senate—which I think is extremely weak.

But the economic slavery argument which the Senator from New York (Mr. Javits) and the Senator from Texas (Mr. Bentsen) were involved in, is not involved in the Senator's amendment. The Senator is not talking about what is involved here. They are not talking about a man who is moving of his own volition; they are talking about a man who is involuntarily separated, who must be laid off. He is entitled at least to reap the benefits of what was negotiated for him and what was taken out of his paycheck. I do not think the Senator from New York would disagree that this is a diminution of his wages which goes into the pension fund.

All the Senator from Washington is saying is that the employee ought to be protected because he, himself, had no cause of action which separated him from his employment. He did not cause it. He is the victim of the economic system, and therefore he is entitled at least to have the protection under the pension plan of having his own money protected.

I do not think it is a very strong amendment. I am for it. I would like to go much further. This amendment is so weak that I cannot understand why the chairman will not accept it.

Mr. Jackson. It is a modest amendment, and I hope the committee will accept it and take it to conference.

If we are really going to do something for the mobile worker, we must at least take care of those who have been laid off or otherwise put on the unemployment list. We are making a special exception for the first 5 years, and I hope the Members of the Senate will realize that, as a matter of equity for those who are laid off in this category.

The Presiding Officer. Who yields time?

Mr. Nelson. Mr. President, how much time do I have remaining?

The Presiding Officer. The Senator has 15 minutes remaining.

Mr. Nelson. Mr. President, I agree wholeheartedly with the principle and the argument made by the distinguished Senator from Washington and endorsed by the distinguished Senator from Indiana, and the distinguished Senator from Rhode Island.

As a matter of fact, the amendment, ideally, does not go far enough. Ideally, we ought to have vesting for every day anybody works, just as we have under the social security system. If somebody works 1 day 5 days, whatever it is, he ought to be covered and vested, and it ought to be portable.

Our problem is that we are dealing with a voluntary plan. When we get to the time that we decide that we will dramatically—if we do—expand social security or go to a compulsory retirement plan, the principle that the distinguished Senator from Washington is talking about should be in the legislation; and I would go further and say, as I just did, that there ought to be vesting and coverage for every day worked.

However, having conceded that, that is not what we are dealing with. We are dealing with a pension plan in which the Labor Commit-

tee and the Finance Committee, after extensive hearings, extensive consideration, and extensive executive sessions, designed a bill which would set certain minimum standards—not an ideal bill.

Many pension plans in this country have much better provisions in every aspect than are required as minimum standards in this bill. We designed them as minimum standards, recognizing that if we designed a bill in which the cost was too much, the employers would not come under it, because they are not compelled to come under it.

At present, about 58 percent of the employees in this country, not counting those in agriculture, are not covered by pension plans. There are hardly any required standards at all, and still they are not covered. We have established them, and if we make the cost too high, those 30 million people are never going to be covered under a private pension plan.

What did we do about vesting? I think we should take a look at where we were and how far we have come. Under the law in existence today, there generally is no requirement for vesting until the day the employee retires from his work. So, under the present law, he could work for 40 years and then be fired or laid off, or leave his employment. He is 64 years old. Not even one day of vesting generally is required under the law.

So we have gone from a situation in which, under current private pension plans, 28 percent—just 28 percent—of all the employees in this country covered by a private pension plan have vested rights. What happens when this vesting provision goes into effect? The day it goes into effect, 83 percent of all the employees in private pension plans in this country will have vested rights. So we have gone from a position of 28 percent now covered with vested rights to 83 percent the day these provisions go into effect. We have gone from a situation in which the law generally does not require any vesting whatever to a position in which it requires vesting at the end of 5 years, given participation at age 30 with at least 1 year of employment.

My objection is not to the philosophy of it. My objection is to the fact that we are going to put costs in here that will make pension plans impossible or impractical, and employers will decide not to establish them. I think we ought to recognize that, on the cost factor alone, the additional vesting costs under this bill will vary from zero for an employer whose plan has vesting provisions as good as those in this bill up to a total of 58 percent of the total cost of a plan which now does not provide vesting before retirement. That is, there are plans whose costs will be increased by 58 percent when this vesting goes into effect.

So, although I agree 100 percent with the philosophy, the objective, and everything else, I think we have gone as far with the vesting as we can go under a voluntary bill. I am one of those who would like to see us move toward a bill that has everybody covered and everybody vested and accruing rights for every day of work. That would be ideal.

Mr. Pastore. Mr. President, will the Senator yield?

Mr. Nelson. I yield.

Mr. Pastore. Merely as a clarification, the Senator says that his proposal gives a vested right in all existing pension plans now. In

other words, a person who has not reached the maximum years in age or time, who might ordinarily lose his right under present plans. has a vested right that is enforceable under the Senator's proposal.

Mr. NELSON. Yes.

Mr. PASTORE. Could an employer, under a voluntary plan, then drop the plan entirely?

Mr. NELSON. Yes. If an employer looks at the plan at any time after this measure is enacted and says, "I want to terminate the plan," he can do so.

Mr. PASTORE. He can still do it?

Mr. NELSON. He can still do it.

Mr. PASTORE. Does not the Senator think some provision should be in the bill that would not allow him to do this? He is getting some benefits under the internal revenue law.

Mr. NELSON. He has to pay off all the vested and accrued benefits, but he does not have to continue the coverage.

Mr. PASTORE. But there are many within that frame who have not achieved that vested right. How do we enforce their right under a contract that does not give them a right?

Mr. NELSON. Until we go to a compulsory plan, it cannot be done.

Mr. PASTORE. My point is that, rather than incur an additional cost of 58 percent, that employer could drop the plan entirely, and everybody would be out in the cold.

Mr. NELSON. Except that employees with vested rights would have to be paid the benefits owed them.

Mr. PASTORE. Does not the Senator think there ought to be a penalty under the internal revenue law for doing that? The employer gets concessions under the internal revenue law.

I realize that it is not mandatory, but the fact remains that they voluntarily engaged themselves in a contract that gave the people a semblance of some kind of rights under a pension plan. Now, because Congress passes a law that compels them to grant a vested right over and above the terms of that contract, they can drop the whole contract and leave everybody out in the cold. How can they do that with immunity?

Mr. NELSON. That is what the law is.

Mr. JACKSON. Mr. President, will the Senator yield?

Mr. NELSON. I yield.

Mr. JACKSON. Would the Senator indicate whether or not the committee's bill is retroactive and, if so, to what date, and what kind of coverage is provided?

Mr. NELSON. It is retroactive in the sense that it covers any past service for any existing plan.

Mr. JACKSON. So that someone who was denied a pension right, say, last year or the year before——

Mr. NELSON. No.

Mr. JACKSON. There are many of these cases—I know the Senator is familiar with them—in which an employee worked 30 years and needed to work 31 years, and he lost his pension on the last day. Will those situations be covered retroactively?

Mr. NELSON. Is the Senator talking about the tragic cases where the plan is not in effect?

Mr. Jackson. No, the plan is in effect. The fellow is laid off the day before he is eligible.

Mr. Nelson. It would not cover some employees and they would have no vested rights unless they had the required minimum of 5 years.

Mr. Jackson. It is not retroactive.

Mr. Nelson. It is for anyone covered by a plan.

Mr. Jackson. But for the worker who is no longer employed. He is out of luck.

Mr. Nelson. It would not cover him for any rights he did not have as the time of his employment.

Mr. Jackson. Then, the retroactive part does not mean much.

Mr. Pastore. Mr. President, will the Senator yield?

Mr. Nelson. I yield.

Mr. Pastore. The number of people in a pension plan controls most of the plan. I have seen cases, and this is not a figment of my imagination, where a big conglomerate comes in and buys up an industry.

Mr. Jackson. That is right.

Mr. Pastore. Then they begin to look at the roster of people working there. They say, "This fellow has 5 years to run and this fellow has 2 years to run. Look at the money we can save on the pension plan if we drop them and bring in new employees."

They have done that time and time again. I would say that when a conglomerate comes in and buys up an industry and drops the old help because they are under the gun, there should be a penalty imposed on them under the Internal Revenue Code.

Mr. Nelson. The concern of the Senator from Rhode Island is covered in the bill.

Mr. Pastore. In what way?

Mr. Nelson. We have plan termination insurance so that if a company went bankrupt and the fund, because of poor investments, did not pay off, or if for any reason that plant was closed down, the termination insurance would pay for the rights of those people.

Mr. Pastore. The Senator said "bankrupt." What if a big conglomerate comes in and buys a small factory, for instance, in Rhode Island, with 50 people, and under the plan they have to reach the age of 65 and to work for 25 years but some employees are only 64 years of age and have worked for only 24 years?

Mr. Nelson. That is covered.

Several Senators addressed the Chair.

Mr. Pastore. I would like to get the answer.

Mr. Bentsen. We have tried to insure that those kinds of inequities are not repeated in the future. We had provided earlier vesting, but we have not taken it to the ultimate or as far as the Senator from Washington would require.

Mr. Pastore. How about pension plans now in existence?

Mr. Bentsen. There will be a short period of time before the bill is fully implemented.

Mr. Jackson. Mr. President, will the Senator yield?

Several Senators addressed the Chair.

Mr. Pastore. Mr. President, the question I propound is this.

The Presiding Officer. The Senator from Rhode Island is recognized.

Mr. Pastore. In an instance where there is an existing voluntary pension plan and a new company comes in and buys that company, and that new company discharges an individual who has worked 1 year short of the time limit and has reached an age 1 year short of the age required under the pension plan, in that particular instance, can this new company that comes in and buys the old company discharge that employee without paying anything under the pension plan?

Mr. Bentsen. As a practical matter this becomes irrelevant once the bill becomes fully effective. It takes about 2 years for the vesting and funding provisions to be fully implemented and in effect.

Mr. Pastore. Therefore, the answer to my question is yes, within 2 years, but not after 2 years.

Mr. Bentsen. No.

Mr. Pastore. What are we saying?

Mr. Curtis. Mr. President, will the Senator yield to me?

Mr. Pastore. This is getting more confused by the second.

Mr. Bentsen. Mr. President——

Several Senators addressed the Chair.

The Presiding Officer. The Senator from Wisconsin has the floor.

Mr. Nelson. Mr. President, I yielded to the Senator from Rhode Island to propound a question, not an answer.

Mr. Pastore. I usually pose the question and if you do not have the answer, I give it to you.

Mr. Bentsen. My understanding of our legislation is that generally on January 1, 1976, the vesting and funding provisions would become effective. These provisions would apply regardless of who came in to buy the company.

Mr. Jackson. Mr. President, will the Senator yield for a question?

Mr. Bentsen. I yield.

The Presiding Officer. All time in opposition to the amendment has expired.

Mr. Jackson. Mr. President, I yield on my own time.

The Presiding Officer. The Senator from Washington is recognized.

Mr. Jackson. Mr. President, the Senator from Rhode Island has propounded a very important question. It is a series of questions but take the example of the man who is laid off after 30 years' service. He is out. He does not have a job any more. That company, as the Senator indicated, previously deducted the cost of the pension contributions from his taxable income as a cost of doing business. The worker gets within 6 months of retirement and is laid off.

I wish to ask the Senator from Wisconsin this question: Does this proposed legislation help that man who is no longer an employee but who worked all but a few months of achieving his 30-year requirement?

Mr. Nelson. Is the Senator talking about someone who worked for 30 years and is laid off before this bill becomes law?

Mr. Jackson. That is correct. There are tens of thousands of them, and the employer was able to deduct the cost of covering them in the program as part of his pension plan; that is, he is able to deduct that amount from his overall taxable income.

Mr. NELSON. I think I am correct in saying no, he is not covered. The provisions of the bill do not go back and give rights to people prior to the applicable provisions of the law.

Mr. JACKSON. In other words, anyone who is laid off and is no longer employed prior to the time this bill becomes effective; anyone prior to that is stuck. Am I right or wrong?

Mr. NELSON. This bill does not retroactively convey rights to people who have been laid off from plants that closed prior to the effective date of the law.

Mr. JACKSON. That is all I asked and that is all the Senator from Rhode Island asked. Employers could get around this bill by taking those individuals off the job before they vest. They could be laid off and they would not be eligible for their pension.

Mr. PASTORE. Mr. President, will the Senator yield?

Mr. NELSON. I yield.

Mr. PASTORE. I think I can ask this question. I am not concerned about the situation existing today without the passage of this bill. I am going to vote for this bill. I want to know what happens once we pass this bill. The Senator indicated that in order to comply, existing pension costs now might have to increase up to 58 percent.

Mr. NELSON. In some plans the vesting would add moderately to the cost, in others it would add 50 percent to the cost.

Mr. PASTORE. Fifty percent of the cost. Therefore, in that case the employer has a perfect right to drop the whole pension plan.

Mr. CURTIS. No; the plan cannot avoid the obligation to pay those accrued benefits that have already vested.

Mr. NELSON. Yes.

Mr. PASTORE. Somebody said yes and somebody else said no and you are all on the same committee.

Mr. CURTIS. But he cannot escape——

Mr. NELSON. He can terminate the plan. Whatever vested and accrued rights an employee has under the plan, he has an obligation to pay but he has no obligation to continue a pension plan and continue to pay into the fund or bring people in. He is obligated under the law for whatever is vested and accrued on the date the plan is terminated. Nothing here forces him to continue a plan.

Mr. PASTORE. And under that plan a person must have worked for 20 years and to the age of 65.

Mr. NELSON. Under the terms of that plan.

Mr. PASTORE. Under the terms of that plan. Now, this law is passed and we find after this law is passed that an individual has worked for 19 years and to the age of 64 and he is fired.

Mr. JACKSON. Prior to the enactment of the law.

Mr. PASTORE. After this act is passed. What happens in that case?

Mr. NELSON. Under this bill he is covered, and he will be paid his accrued, vested rights, fired or not.

Mr. PASTORE. In other words, this bill gives vested rights to existing pension contracts?

Mr. NELSON. That is correct.

Mr. PASTORE. That existed before the bill was passed?

Mr. NELSON. Yes.

Mr. PASTORE. The Senator from Texas is disagreeing.

Mr. Bentsen. No. Remember the effective date of the legislation is important. These provisions will not become totally effective for about 2 years.

Mr. Javits. Mr. President, will the Senator use his microphone? We cannot hear him.

Mr. Pastore. Mr. President, I think we ought to have a recess and try to get a consensus before we start getting any more answers.

Mr. Nelson. I answered the question.

Mr. Pastore. Is it the Senator's answer that after 2 years—after this bill passes—a person has a vested right though he worked only 19 years and was 64 years of age; but before the two years, he can be fired and get nothing, and in that case there is no penalty against the company which took advantage of the revenue law?

The Presiding Officer. All time on the amendment has expired.

Mr. Jackson. Mr. President, I ask unanimous consent that we may proceed for 2 minutes notwithstanding any previous order.

The Presiding Officer. There is time on the bill, if someone cares to yield it.

Mr. Jackson. Mr. President, will the Senator from New Jersey yield me 2 minutes on the bill?

The Presiding Officer. The Senator from Washington will please suspend until we receive a message from the House of Representatives.

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Retirement Income Security for Employees Act

The Senate continued with the consideration of the bill (S. 4) to strengthen and improve the protections and interests of participants and beneficiaries of employee pension and welfare benefit plans.

Mr. Jackson. Mr. President, will the Senator from Wisconsin yield me 2 minutes on the bill?

Mr. Nelson. Mr. President, how much time do we have left?

Mr. Jackson. All time on the amendment has expired.

Mr. Nelson. Yes, I yield the Senator 2 minutes on the bill.

The Presiding Officer. The Senator from Washington is yielded 2 minutes on the bill.

Mr. Jackson. Mr. President, first of all, I ask for the yeas and nays on the amendment.

The yeas and nays were ordered.

Mr. Jackson. Mr. President, I just want to make one additional observation. There has been much publicity on this pension bill. I have commended the members of the committee for plowing new ground. I think they deserve a lot of credit, because we did not have a decent pension program before. But I want to point out that we are going to get letters from people who will say that they are no longer employed, that they worked 30 years and they lost their pension rights just a few moments before their eligibility date. They will point out that their employer was able to deduct all those premiums as a matter of doing business, and they will wonder why they get nothing.

I just mention this because I think it is going to be a real problem that is going to haunt all of us because of the wide publicity about this measure. The theme of it is that we are reconstituting pension rights

that have been lost, and I think we will find it difficult to answer people who tell us they have worked 30 years and they got nothing, while someone who has worked 6 years will get a vested right, and I will refer the letters to the committee.

Mr. NELSON. I want to remind the distinguished Senator from Washington that his amendment does absolutely nothing about this at all for those people who lost their jobs, whose pension plans collapsed, where the corporations went bankrupt, who for 4 or 5 years——

Mr. JACKSON. Not in this amendment. I do not pretend to do that. I am dealing with this problem, however, with the same vesting of rights we gave to Federal employees, and would give them to the private sector starting with the first year. That is what I am doing. That is a separate issue.

Mr. NELSON. Mr. President, I yield to the Senator from Indiana.

* * * * * * *

RETIREMENT INCOME SECURITY FOR EMPLOYEES ACT

The Senate continued with the consideration of the bill (S. 4) to strengthen and improve the protections and interests of participants and beneficiaries of employee pension and welfare benefit plans.

Mr. JAVITS. Mr. President, I yield myself 1 minute on the bill.

I believe the various points of view have been exposed, and, of course, we cannot relieve all the horror stories that caused us to bring this legislation before the Senate. That is why we spent $1 million for an investigation. Those already affected know we cannot do anything about them; they want us to help others similarly situated. But there is a provision in the bill that deals with the point the Senator from Rhode Island raised. It is section 669(A), on page 226 of the bill, which provides that, once the bill is passed, an employer cannot fire anybody with impunity to avoid pension responsibility. The Secretary of Labor will enforce that to protect the workers. I think that is introducing a totally new factor, and it is our effort to preserve the rights of whoever has the ability to have them preserved until this bill catches hold. That is why I think our plan is valid and the amendment ought to be rejected.

Mr. NELSON. Mr. President, I yield time on the bill to the Senator from Texas.

Mr. BENTSEN. Mr. President, the Senator from Rhode Island made an excellent point, wanting to know why the 2-year hiatus was in the bill before we effectuated this bill. The reason is purely a matter of mechanics. The Treasury testified it is going to take a great deal of time, on this major piece of legislation, to draw up all the regulations. We are talking about modifying a great many trust plans and pension provisions in this country. Two years is a short period to accomplish that and bring it to fruition. That is why we settled on 2 years. I would like it to be enforced tomorrow, to get rid of all the horror stories we heard before our committee, but we cannot act that fast.

Mr. LONG. Mr. President, will the Senator yield?

Mr. BENTSEN. I yield.

Mr. Long. Is it not true that if we make this law too burdensome on business, they can terminate their plans and get rid of them?

Mr. Bentsen. Certainly. If we make this too burdensome on businessmen, they are not going to install new plans, and we are going to deny millions of prospective pension plan participants the right to be in those pension plans and have retirement plans working for them.

Mr. Jackson. Mr. President, will the Senator yield?

Mr. Bentsen. I yield.

Mr. Jackson. We have spoken a lot about voluntarily established pension programs. I recognize that sector in the pension business, but I would call to the attention of the Senate that a very large part, in terms of volume, of pension participation stems from the collective bargaining process. We are reminded of this by the recent settlement of the United Auto Workers with Chrysler. So let us not conclude that this is an all-voluntary matter. Pension programs are indeed a part of the wage settlements that take place. I noticed that in the case of the Chrysler agreement I believe it now provides for a 30-year retirement plan, regardless of age. I believe I am correct. This, I must say, is quite a substantial change.

I just wanted to make the point.

Mr. Bentsen. No one is arguing that here, but the great balance of employees in the country are not represented by labor unions, and we are trying to get these people to have an opportunity to participate in pension plans. I do not think we are going to get them in if we make this bill too burdensome.

The Presiding Officer. All time on the amendment having expired, and the yeas and nays having been ordered, the question is on agreeing to the amendment of the Senator from Washington (Mr. Jackson) as modified. The clerk will call the roll.

The legislative clerk called the roll.

Mr. Robert C. Byrd. I announce that the Senator from Alaska (Mr. Gravel), the Senator from Michigan (Mr. Hart), and the Senator from Montana (Mr. Metcalf) are necessarily absent.

Mr. Griffin. I announce that the Senator from Utah (Mr. Bennett) is absent on official business.

I also announce that the Senator from Oklahoma (Mr. Bellmon) and the Senator from Kansas (Mr. Pearson) are absent because of illness.

I further announce that the Senator from Arizona (Mr. Goldwater), and the Senator from Ohio (Mr. Saxbe) are necessarily absent.

The result was announced—yeas 14, nays 78, as follows:

[No. 397 Leg.]

YEAS—14

Abourezk	Jackson	Pastore
Bible	Kennedy	Pell
Burdick	Magnuson	Proxmire
Hartke	McGee	Ribicoff
Hollings	Mondale	

NAYS—78

Aiken
Allen
Baker
Bartlett
Bayh
Beall
Bentsen
Biden
Brock
Brooke
Buckley
Byrd, Harry F., Jr.
Byrd, Robert C.
Cannon
Case
Chiles
Church
Clark
Cook
Cotton
Cranston
Curtis
Dole
Domenici
Dominick
Eagleton
Eastland
Ervin
Fannin
Fong
Fulbright
Griffin
Gurney
Hansen
Haskell
Hatfield
Hathaway
Helms
Hruska
Huddleston
Hughes
Humphrey
Inouye
Javits
Johnston
Long
Mansfield
Mathias
McClellan
McClure
McGovern
McIntyre
Montoya
Moss
Muskie
Nelson
Nunn
Packwood
Percy
Randolph
Roth
Schweiker
Scott, Pa.
Scott, Va.
Sparkman
Stafford
Stennis
Stevens
Stevenson
Symington
Taft
Talmadge
Thurmond
Tower
Tunney
Weicker
Williams
Young

NOT VOTING—8

Bellmon
Bennett
Goldwater
Gravel
Hart
Metcalf
Pearson
Saxbe

So Mr. Jackson's amendment, as modified, was rejected.

Mr. Javits. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. Curtis. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. Hathaway. Mr. President, I call up an amendment which I have at the desk, and ask for its immediate consideration.

The Presiding Officer. The Senate will be in order. Senators will take their seats.

The amendment will be stated.

The legislative clerk proceeded to read the amendment.

Mr. Hathaway. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The Presiding Officer. Without objection, it is so ordered.

The amendment is as follows:

On page 69 of Title VII after line 15 add the following subsection:

(c) it meets the requirements for a qualified trust which provides benefits for employees, some or all of whom are employees within the meaning of subsection (c)(1) or proprietary employees within the meaning of section 412(b)(1), as those requirements are defined in subsections 401(j) and 401(k).

Mr. Hathaway. Mr. President, the purpose of this amendment is to remedy a loophole which I believe allows a partnership, in addition to deducting a maximum $7,500 for a contribution to a pension plan—

Mr. Nelson. Mr. President, may we have order? I cannot hear the Senator.

The PRESIDING OFFICER. The Senator will suspend until it is restored. The Senate will be in order. Senators will please take their seats. The Senator from Maine has the floor.

Mr. NELSON. Mr. President, will the Senator yield for a question?

Mr. HATHAWAY. I yield.

Mr. NELSON. I did not understand what the Senator said. Is he referring to the H.R. 10 $7,500 provision?

Mr. HATHAWAY. The Senator is correct. I will start over.

The purpose of this amendment is to remedy what I believe is a defect in title VII, which allows, in a partnership, each of the partners of which can deduct $7,500 one or more partners to give his deduction of $7,500 to another partner, so that if there were, say, two partners, one partner, instead of getting his limit of $7,500, could get $15,000; he could get the other partner's deduction; or, if there were more partners than that, he could theoretically get more.

I understand the purpose of this amendment, which was recommended by the Treasury Department, was to allow a partner, say at age 55, who was just starting the plan, to go over the $7,500 allowable amount to be deducted by taking a part or all of the share of younger partners, in order for the senior partner, who had only 10 years before retiring, to invest enough to give himself a satisfactory retirement income, based upon his current salary.

I have, really, no objection to that. The problem is that the section itself is not so limited. My amendment would simply limit the amount of benefits that any one partner could get to the $75,000 limitation which is now a part of the bill as a result of the amendment of the Senator from Wisconsin, which extends the $75,000 limitation which at first applied only to proprietary corporations to all corporations, so that, in effect, this limitation would apply to all pension plans, whether a partnership, a proprietary corporation, or a nonproprietary corporation.

Mr. CURTIS. Mr. President, will the Senator yield?

Mr. HATHAWAY. I yield to the Senator from Nebraska.

*   *   *   *   *   *   *

RETIREMENT INCOME SECURITY FOR EMPLOYEES ACT

The Senate continued with the consideration of the bill (S. 4) to strengthen and improve the protections and interests of participants and beneficiaries of employee pension and welfare benefit plans.

Mr. CURTIS. Mr. President, I ask unanimous consent that Mr. George Pritts of the staff of Senator Fannin be accorded the privilege of the floor for the duration of the consideration of this measure.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CURTIS. My question is this: Is it not true that the way the Senator's amendment is drawn, it is not limited to partnerships, but it affects everyone under what is commonly referred to as H.R. 10, or the Keogh plan, or what sometimes is referred to as self-employed?

Mr. HATHAWAY. Yes; that is true.

Mr. CURTIS. Is it not also true that those people who take advantage of H.R. 10, after meeting certain requirements not required of corporations, one of them is that they must take care of all employees, not

just classes of employees, and another one is that they must give full vesting immediately? This amendment, the Treasury tells me, will add additional restrictions but will do very little, if anything, to prevent any abuses—maybe in one case out of 10,000.

I thank the Senator for yielding.

Mr. HATHAWAY. In answer to the Senator from Nebraska it would be difficult to determine the extent of abuses. Obviously, there could be abuses in that a partnership could pool its contributions in order to give one person a large pension. I do not see that it would be an onerous burden on the Treasury Department, nor would it be a burden on those participating in the plan.

Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER (Mr. Helms). Is all time now yielded back?

Mr. NELSON. Mr. President this amendment puts a ceiling or a limitation on the amount of money that a partner in a partnership, for example, could use to transfer for the benefit of the senior partner, whereas under present law there is no such limit. My own point of view would be to limit it to $7,500 an individual, which was the original intent of the bill. This limitation, however, is better than nothing, but I think that the House should look at the proposition of limiting it more. It is a little better than the present situation.

Mr. JAVITS. Mr. President, I have no objection to the amendment.

Mr. NELSON. I have no objection and we are ready to accept the amendment.

I yield back the remainder of my time.

The PRESIDING OFFICER. All time on this amendment has now been yielded back.

The question is on agreeing to the amendment of the Senator from Maine (Mr. Hathaway).

The amendment was agreed to.

Mr. HATHAWAY. Mr. President, I move that the vote by which the amendment was agreed to be reconsidered.

Mr. ROBERT C. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. JAVITS. Mr. President, I yield myself 3 minutes on the bill and would like to engage, if I may, in colloquy with the manager of the bill, the Senator from Wisconsin (Mr. Nelson).

I would like to inquire to the managers of the bill concerning the purpose of a provision added to S. 4 by the compromise amendment in the nature of a substitute. I refer specifically to section 424 entitled "Other Risks" which authorizes the insurance corporation to insure, subject to all the appropriate limitations, the payment of other classes of benefits under a plan wherever feasible, to prescribe the terms and conditions of such insurance and to establish and collect such premiums as may be necessary.

It is my understanding that this provision was adopted in order to deal with problems of certain plans which are negotiated in the basic metal, metal mining, and related industries.

Mr. NELSON. The Senator is correct.

Mr. JAVITS. I have been informed that in the basic metal, metal mining, and related industries, pensions are payable upon the perma-

nent shutdown of a plant, facility, such as a mine or plant railroad, department, or subdivision thereof, to employees who are 55 years of age or older, if the sum of the age of the employee plus his years of service is 70 or more, or if, irrespective of his age, such sum is 80 or more. Further, even though, on the shutdown date, an employee may not meet the requirements, his service continues to accumulate, and, if in the 2 years from the date the layoff starts, which may be earlier than and in anticipation of the shutdown, he qualifies under the rule, and he would, if the plan were in force, be granted a pension.

The right to a pension under these circumstances does not become vested within the meaning of the bill since no employee who quits his employment may become entitled to a vested interest unless there has been a permanent plant shutdown. After such a permanent plant shutdown has occurred and the employee's pension has vested as a result, insurance coverage would of course apply under section 422(a). But sometimes—perhaps often—plant shutdowns and plant terminations may occur at the same time and under these circumstances insurance coverage would not attach because the vested pension had not been earned prior to plan termination, but in fact resulted from a plant shutdown which was coincidental with plan termination.

Mr. Nelson. The Senator is correct. He has put his finger on precisely the problem that we wanted to solve if it was feasible to do so by providing additional authority to the insurance corporation. It is, of course, very difficult to ascertain the dimensions of these risks since vested liabilities arise not as a result of the employee's length of service, but are rather triggered by permanent plant shutdowns which may or may not accompany plan termination. Since this was a rather unique type of situation which might not fit within the regular insurance framework established under the bill, we drafted a provision which would authorize the insurance corporation in section 424 to determine whether the insurance of this type of risk could be accomplished in a feasible manner and gave it discretion to establish the terms and conditions of such insurance and set such premiums as may be necessary.

Mr. Javits. I thank the Senator for his explanation. I am very glad that this provision was included. It would, in my judgment, be most unfortunate and inequitable if we were to permit a fortuitous sequence of events to determine the insurability of vested rights. In other words, one man would have his vested rights insured because there was a permanent plant shutdown prior to plant termination, but the other man would not have his vested right insured because the plant shutdown occurred at the same time the pension plan itself was terminated. I commend the Senator from Wisconsin for his foresight in including such a provision that would enable the insurance corporation to deal with this problem.

Mr. Aiken. Mr. President, may I ask the Senator from New York, does this proviso apply to Americans employed in mines in foreign countries?

Mr. Javits. The answer is that this provision applies to plans operating here. That is the essential test—that is, is the plan a U.S. pension plan? If it is, then it would be applicable under this particular section to which the Senator from Wisconsin (Mr. Nelson) has replied.

AMENDMENT NO. 504

Mr. Buckley. Mr. President, I call up my amendment No. 504 and ask that it be stated.

The Presiding Officer. The amendment will be stated.

The assistant legislative clerk read as follows:

On page 2, beginning at line 19 and ending at line 21, strike "exceed an amount equal to the lesser of $1,000 or his earned income paid or accrued for such taxable year." and insert "be less than the lesser of his earned income paid or accrued for such taxable year up to a deduction of $1,000, nor more than 15 per centum of his earned income paid or accrued for such taxable year, up to a deduction of $7,500.

Mr. Buckley. Mr. President, I think that this amendment is self-explanatory. It would retain the existing provision allowing individuals not otherwise covered by pension plans to set aside out of their earnings up to $1,000 a year irrespective of the percentage of total earnings represented. I am suggesting that this be the minimum allowed and that the maximum allowed to be set aside be 15 percent of earnings up to a maximum deduction of $7,500.

My purpose here is to try to establish a greater degree of parity among the various categories of working Americans for which this and existing legislation provides.

Existing law provides a substantial tax benefit to millions of workers covered under pension plans by postponing the taxation of current earnings. I am not talking about the business deduction that the employer is entitled to but, rather, the fact that a wage earner is not required to pay taxes currently on the value of contributions made to a pension fund on his behalf. Rather, he will be paying taxes on this deferred income when received after his retirement, and of course he will then be in a significantly lower income bracket.

The other exemption, the other tax benefit that these workers receive, is the exemption of taxation on the income accruing on the money that has been set aside for their future use. To the extent that tax revenues are postponed on current income, there is imposed on all American taxpayers a real burden. Therefore, in a real economic sense, wage earners who are not covered by pension plans are helping to pay for those persons who are receiving the benefits of these tax provisions.

I believe that one of the most significant, constructive provisions in the bill we are now debating is the new provision that will allow individuals to deduct up to $1,000 a year if contributed to qualified individual retirement savings plans. But my concern is several fold. First of all, the $1,000 privilege, in itself, is a step in the right direction: but it falls far short of equalizing the net tax impact among all workers, all individuals, who are able to postpone taxation on current earnings.

Second, I believe that one of the purposes of the proposed legislation, which is to encourage more people to set aside earnings for their retirement years, is to a degree defeated by the thousand-dollar limitation, especially in the case of older workers.

Let us take somebody in his or her fifties who expects to retire or will be retired under a mandatory retirement employment contract at age 65. To be able to set aside $1,000 a year for 15 years does not really create a large enough principal amount to generate meaningful in-

come in later years. Therefore, for these individuals I think the company provision fails to create a meaningful incentive for saving.

On the other hand, if my amendment were adopted and if somebody were earning in the vicinity of $35,000 a year, $5,000 a year could be set aside, and there would be a very real incentive to set earnings aside; because over a 10- or 15-year period, between $50,000 and $75,000 will have accrued, which would buy a significant annuity.

Mr. President, the reason why I selected $7,500 originally was to attempt to eliminate the disparity between the treatment of these individuals and the treatment provided for the so-called proprietary employees. The amendment of the Senator from South Carolina (Mr. Thurmond) in effect wiped out this particular distinction.

I understand that I have run into some resistance from members of the Finance Committee on some of these details. In the interest of comity, I would be happy to revise my figure downward drastically to $2,500, which would establish the principle of the entitlement of these individuals to a parity of treatment, and then let our actual experience with this new provision, and further studies conducted by the Finance Committee and by the Ways and Means Committee determine exactly where the figures ought to be set, what the conditions ought to be, in order to make sure that all Americans who are earning money and paying taxes get the same breaks insofar as providing for their retirement is concerned.

Mr. Long. Mr. President, will the Senator yield?

Mr. Buckley. I am glad to yield.

Mr. Long. Mr. President, this provision in the law is the type of thing that has been advocated by the Senator from Nebraska (Mr. Curtis) for a long time. The committee felt that we should try this approach. We are told that the probable cost will be about $270 million to let every citizen not in a pension plan set aside for his own plan, for his own retirement. That is a lot of money. We have not had the first person come before us to ask for this. This is just a benefit that Congress voted for the taxpayer based on the same general argument that the Senator made.

Some of us were concerned about the cost. We were thinking about $1,000. We said we would see how that worked; and based on the experience we had with the $1,000 limit, we would decide whether the limit should be increased in the future. What the committee agreed to would result in a loss of revenue of $270 million.

What the Senator from New York is talking about would cost a billion dollars revenue a year. It would have a great deal of inflationary impact. The Government is spending too much revenue now. Think of it: a billion dollars.

Mr. Buckley. Mr. President, will the Senator yield?

Mr. Long. Mr. President, may I be yielded now a few minutes for the opposition?

The Presiding Officer. Does the Senator from New York yield the floor?

Mr. Buckley. I yield the floor.

Mr. Long. Mr. President, a billion dollars is a large amount, when we have yet to have the first person come to us to ask for it for himself. The only person who has asked for it is the Senator from Nebraska

(Mr. Curtis), who thought it would be a good idea in terms of tax equity for a person wanting to buy the insurance to participate in the program himself. The Senator from Nebraska offers that concept.

If we voted for an amendment in this fashion, we would be competing with that program. People would be asking, "Can you top this?" Someone would come in with the idea that this is a good program; why not let everybody get into the act? Before we could get it to the Senate, without the first proposed beneficiary ever asking for it, we would be raising the amount from $270 million to a billion dollars.

I would be willing to cooperate to the extent that the Government might be able to offer something along this line. In the spirit of compromise, I would like to have a chance to think about this. I would urge the Senator to accept a figure of $1,500, if he would be willing to settle for that. Then we could see how the plan worked. That would cost us $70 million beyond what we are estimating. It would run the cost up to $340 million.

But I think that to go beyond that point would be irresponsible on the part of the Senate and would certainly be irresponsible on the part of the Committee on Finance, which has to think about the fiscal capabilities of the Government in order to make its analysis, to go beyond that figure at this point. We could see how this proposal would work; and if the experience dictated that a great many people liked it, a great many people responded to it, and the experience was favorable under it, then we could consider increasing the amount at a future date.

After all, I would like to point out that the Senator from Nebraska has been fighting for this concept for many years. He offered a similar amendment on a pension bill several years ago. So if we do not go too far overboard to begin with I think there is a better chance to do something than there is when we become so ambitious in the beginning that those on the other side of the Capitol say we cannot afford it at all. The Treasury Department favors it but they would have to oppose the concept on the ground that we cannot afford that much.

Would the Senator be willing to settle for a lesser figure say $1,500?

Mr. Buckley. I would be willing to consider a lesser figure but first I would like to clarify the Senator's estimate of the cost of my proposal. I think I have established in 2½ years some reputation for fiscal prudence. I have been listed as one of the six most frugal men around here. I did try to get an estimate of the cost from members of my staff who came up with a figure of $340 million at $7,500. That is a long way from $1 billion. Of course, the $1,000 proposal would cost $170 million. Therefore, my proposal would have doubled this cost.

Mr. Nelson. Mr. President, will the Senator yield for a question?

Mr. Buckley. I yield.

Mr. Nelson. What is the figure the Senator used for the cost, the Treasury cost at $7,500?

Mr. Buckley. $340 million.

Mr. Nelson. I am advised by counsel that the cost is $270 million per $1,000. It would be $340 million for the $1,500 limitation with the 15 percent limit on all over $1,000.

Mr. Buckley. Would the Senator please give me the last figure?

Mr. Long. The staff of the joint tax committee estimates that in 1974 the cost would be $630 million in taxes, in 1976 it would be $870

million, and in 1977 it would be $1 billion a year. The reason it would move up is that each year more people would be inclined to use it than the year before so that the cost would keep pyramiding. Of course, against that one has to recognize the committee recommendation would be $270 million but that would be $730 million less than the cost of the Senator's proposal, which is a great amount of money.

I hope that the Senator, having been one of our great conservatives in the Senate, and having decided to go for a liberal idea, has not decided to go to the ultimate extreme. I hope he will restrain himself somewhat.

Mr. BUCKLEY. Mr. President, if the Senator will yield, I believe that one of the great principles underlying conservative philosophy and thought is equity. Conservatives believe that in any system of taxation there is an obligation to maintain equity when the Government is extracting money that in the first instance belongs to the people earning it and not to the Government. So if it costs something to establish equity, this is something we must be ready to accept in upholding that principle.

I agree that a possible additional cost of as much as $1 billion strains even my insistence on equity, knowing that the Committee on Finance will be addressing itself to the problem of establishing equality of treatment in the months and years ahead.

Would the Senator settle for a figure of $2,000? Would that be acceptable to the Senator?

Mr. LONG. I hope the Senator will not insist on that. I have discussed this with some of my colleagues. We realize the Senator has very fine intentions in this regard. We would be willing to accommodate him to the extent of a 50-percent increase in what the committee recommended. We believe the Treasury will support that. We really feel that with the additional cost of this bill, such as the increase to which the Senator makes reference, that we are talking about a group of people who have not been asking for this, who would be surprised to see it, but I am sure they would be pleased to see it. If this works out as we believe it undoubtedly will, it will cause two things to happen: First, to raise this figure and, second, to reduce what others get.

We probably will have to withdraw some of the liberality we voted for others in order to accommodate people who are not in the pension system at all.

Mr. BUCKLEY. I would like to urge one benefit, and that is in connection with fighting inflation. My amendment would encourage salting away another $700 million in savings, thus withholding from the economy.

Mr. LONG. It does go along that line, but along with some other things, there are other ways we can encourage savings. Other Senators have other suggestions.

I hope the Senator compromises with us on this matter. I would like to accommodate the Senator, I would appreciate it if the Senator would consider reducing his amendment to $1,500 with the understanding that we will consider it in a few years. It may be that if we can prevail and make this law, in due course perhaps we can raise it to $2,000 or $2,500.

Mr. BUCKLEY. Mr. President, I have learned from sad experience that any time the chairman does not accept an amendment, it has

little chance of succeeding. Under those circumstances I agree to amend my amendment by striking the figure $7,500 in line 7 and substituting $1,500.

The PRESIDING OFFICER. The Senator has the right to amend his amendment.

Mr. JAVITS. Mr. President, will the Senator yield?

Mr. BUCKLEY. I yield.

Mr. JAVITS. Mr. President, I counseled the Senator accordingly. It is a very wise course as far as I am concerned, and the amendment would be satisfactory to me. I do not know that it has been debated but we have a problem of revenue laws involved. We have an estimate of $170 million at the $1,000 figure. Now we have an estimate of $270 million. We add $80 million by this amendment and as we have argued on other amendments we have a problem of balancing the bill.

Mr. President, while I am on my feet I would like to congratulate my colleague for his enterprise and initiative in bringing up this matter. He has already achieved a remarkable concession and achievement. As far as I am concerned the amendment is acceptable.

Mr. BUCKLEY. I thank the Senator.

Mr. CURTIS. Mr. President, if the Senator will yield, as an original sponsor I thank my colleague for his contribution. I hope the time comes when it is raised 50 percent.

The PRESIDING OFFICER. Do Senators yield back their time?

Mr. BUCKLEY. I yield back my time.

Mr. LONG. I yield back my time.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from New York as modified.

The amendment was agreed to.

Mr. BUCKLEY. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. JAVITS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HARTKE. Mr. President, I send to the desk a modification of my amendment, No. 485.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk proceeded to read the amendment.

Mr. HARTKE. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered; and, without objection, the amendment will be printed in the Record.

The amendment, ordered to be printed in the Record, is as follows:

Beginning on page 13, line 4, strike everything through and including page 37, line 2 and insert in lieu thereof the following:

"SEC. 201. (a) A pension plan shall not be an eligible pension plan unless the Secretary of Labor certifies to the Secretary of Treasury that such plan provides that participants shall be vested 100 per centum of the accrued portion of the normal retirement benefits of such funds attributable to covered service both before and after the effective date of this title—

"(1) after 10 years service under the fund, during the first three years following the date of enactment of this title.

"(2) after 8 years service under the fund, during the fourth and fifth years following the date of enactment of this title, and

"(3) after 5 years service under the fund following the end of the fifth year after the date of enactment of this title.

"(b) A pension plan may require as a condition of eligibility to participate, a period of service no longer than two years or age 25, whichever occurs later.

"(c) Any participant covered under a plan, for the number of years required for a vested right under this section, shall be entitled to such vested right regardless of whether his years of covered service are continuous, except that a plan may provide that—

"(1) three of the years required to qualify for a vested right under subsection (a) shall be continuous under standards prescribed under subsection (d).

"(2) service by a participant prior to the age of twenty-five may be ignored in determining eligibility for a vested right under this section, unless such participant or an employer has contributed to the plan with respect to such service, and

"(3) in the event a participant has attained a vested right equal to 100 per centum of the accrued portion of the normal retirement benefit as provided by the plan with respect to such service, and such participant has been separated permanently from coverage under the plan and subsequently returns to coverage under the same plan, such participant may be treated as a new participant for purposes of the vesting requirements without regard to his prior service.

"(d) The Secretary shall prescribe standards, consistent with the purposes of this Act, governing the maximum number of working hours, days, weeks, or months, which shall constitute a year of covered service, or a break in service for purposes of this Act. In no case shall a participant's time worked in any period in which he is credited for a period of service for the purposes of this section, be credited to any other period of time unless the plan so provides.

"(e) Notwithstanding any other provision of this Act, a pension plan may allow for vesting of pension benefits after a lesser period than is required by this section.

"VARIANCES—DEFERRED APPLICABILITY OF VESTING STANDARDS

"SEC. 202. (a) Where, upon application to the Secretary of Labor by plan administrator and notice to affected or interested parties, the Secretary of Labor may defer, in whole or in part, applicability of the requirements of section 201 of this title for a period not to exceed five years from the effective date of title II, upon a showing that compliance with the requirements of section 201 on the part of a plan in existence on the date of enactment of this Act would result in increasing the costs of the employer or employers contributing to the plan to such an extent that substantial economic injury would be caused to such employer or employers and to the interests of the participants or beneficiaries in the plan.

"(b) For purposes of subsection (a), the term 'substantial economic injury' includes, but is not limited to, a showing that (1) a substantial risk to the capability of voluntarily continuing the plan exists, (2) the plan will be unable to discharge its existing contractual obligations for benefits, (3) a substantial curtailment of pension or other benefit levels or the levels of employees' compensation would result, or (4) there will be an adverse effect on the levels of employment with respect to the work force employed by the employer or employers contributing to the plan.

"(c)(1) In the case of any plan established or maintained pursuant to a collective bargaining agreement, no application for the granting of the variance provided for under subsection (a) shall be considered by the Secretary of Labor unless it is submitted by the parties to the collective bargaining agreement or their fully authorized representatives.

"(2) As to any application for a variance under subsection (a) submitted by the parties to a collective bargaining agreement or their duly authorized representatives, the Secretary of Labor shall accord due weight to the experience, technical competence, and specialized knowledge of the parties with respect to the particular circumstances affecting the plan, industry, or other pertinent factors forming the basis for the application."

Mr. HARTKE. Mr. President, I ask unanimous consent that any technical changes necessary be made in the amendment to make it conform to the modified bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HARTKE. Mr. President, I propose that 100 percent vesting be achieved after only 5 years of service. These more progressive rules on vesting will open the way for more frequent job changes, increases in work satisfaction, a more mobile and a more effective labor force. We owe this to the working men and women of this country. In order to

demonstrate graphically the superiority of the Hartke approach, I submit the following table and ask unanimous consent that it be printed in the Record at this point.

There being no objection, the table was ordered to be printed in the Record, as follows.

Age	Percent vested committee	Percent vested Hartke
20	0	0
25	0	100
30	50	100
35	100	100

Mr. HARTKE. Mr. President, the table shows what would happen to a worker beginning his job at age 20. Under the Finance Committee proposal, this worker would not qualify for participation until age 30. After 10 years of work, he would be only 50-percent vested. This worker would be 35 before he was fully vested under the committee bill, but only 25 under the Hartke proposal.

It is assumed by many that the cost of these improved vesting standards will be prohibitive. This is just not true.

Citing the cost study of mandatory vesting provisions written by Donald Grubbs for the Senate Subcommittee on Labor, my more progressive vesting provision of 100 percent after 5 years or after age 25, would increase the cost to the employer of from one-tenth to four-tenths of 1 percent in the percentage of payroll. This is only two-tenths of 1 percent greater than the costs of the very weak vesting provision in S. 4 or S. 1179, or the modified bill which has come before us.

It should also be pointed out that this cost would be shared equally among employers. No company or firm would be placed at a comparative disadvantage vis-a-vis another.

Mr. President, under the Finance Committee proposal, a qualified plan must provide at least 25-percent vesting after 5 years participation, 5-percent additional vesting for each of the next 5 years, and 10 percent each year for the next 5 years thereafter. This formula would provide for at least 25 percent after 5 years participation, 50 percent after 10 years, and 100 percent after 15 years.

Progressive vesting rights are the heart of pension reform. Weak vesting clauses make for ineffectual and superficial pension legislation. The committee's proposal gives the illusion of reform without the substance. The vesting provisions are extremely weak and inadequate. Such a scheme would discriminate against women, seasonal workers, and workers in mobile or faltering industries. A recent Senate Labor Subcommittee study found that, for plans requiring 10 years participation or less for vesting, 78 percent of those separated did not qualify for benefits. Under these same conditions, the committee proposal would provide 50 percent vesting after 10 years participation for only 22 percent of those who separate. I do not consider such an approach acceptable.

Achieving vested rights for women is also difficult under the committee's proposal. Most women work at a job for shorter periods than men, and often work part-time or part-year. The committee has made no provision for part-time or part-year work. While men in manu-

facturing have a median of 14.3 years of service, women in their later years, have only 8.3 years of service. And in retailing, women over 45 had an average of 4.9 years. As a result, a woman would achieve only 40 percent of her vested rights. This is not a recent retirement benefit.

A moderately good benefit will give $5 a month for each year of credited service. A normal retirement for a woman would be 8 years of credited service or $40 a month. But the committee's proposal would provide only 40 percent of this or $16 a month—less than $4 a week. And that benefit is subject to erosion by inflation between the time it vests and the time it becomes payable.

I am especially aware of the situation in the aerospace industry, which fact we were alerted to by the Senator from Washington (Mr. Jackson), because aerospace is an example of a faltering industry in which many plants have shut down and many more will shut down in the future. A recent study found that 80 percent of the employees in this industry had completed fewer than 10 years of service.

At the very best, the committee's proposal would provide 50 percent vesting for these workers—too minimal a standard.

With no provision for part-year work, it will be virtually impossible for the seasonal worker to attain vested rights. Many cumulative years of service will add up to nothing in retirement.

The committee's vesting proposal would provide for little or no benefits for the majority of workers in this country. It ignores the overwhelming evidence which demonstrates that the weaker the vesting requirements, the less likely it is that the participant will ever receive his needed pension benefits.

* * * * * * *

Retirement Income Security for Employees Act

The Senate continued with the consideration of the bill (S. 4) to strengthen and improve the protections and interests of participants and beneficiaries of employee pension and welfare benefit plans.

Mr. Hartke. Mr. President, I ask for the yeas and nays on my amendment.

The yeas and nays were ordered.

Mr. Nelson. Mr. President, how much time is left on the amendment?

The Presiding Officer. Twenty-nine minutes remain to the Senator from Wisconsin.

Mr. Nelson. Mr. President, precisely the same issue is involved here that was involved in the amendment proposed by the Senator from Washington.

I would like to see 100 percent vesting, as I said, not at the end of 5 years, but at the end of the first day of work—100 percent vesting and 100 percent accrued benefits. The problem is the same as the problem we discussed on the Jackson amendment, and that is cost. So reluctantly I am compelled to oppose the amendment.

I would point out, by the way, that the negotiated agreement between one of the biggest unions and most successful unions in America, if not the most successful one, and one of the most successful corporations in the country; namely, General Motors and the Auto Workers, provides for 100 percent vesting at the end of 10 years. So

the proposal of the Senator from Indiana is a 100 percent vesting 5 years earlier than that proposed in the United Auto Workers contract. Furthermore, in fact, the United Auto Workers contract does not provide for any vesting for any employee until 10 years have expired. and then it is 100 percent vested immediately at the end of 10 years.

Mr. Javits. Mr. President, will the Senator yield me 5 minutes?

Mr. Nelson. Mr. President, I yield whatever time the Senator may need.

Mr. Javits. Mr. President, we have debated the basic principle which is involved under the Jackson amendment. The results are in on that. If anything, it seems to me this amendment is less attractive even than that, which was based on giving vesting during the first 5 years upon severance or termination of employment.

I will say this, or I would not have taken the time of the Senate following the fine summing up of the situation by the Senator from Wisconsin (Mr. Nelson): The Senator from Indiana (Mr. Hartke) has been a stimulant in this matter. I said it in my original presentation. I say it again. No matter how the managers of the bill, including myself, become vexed over having to fight amendments, it is only his duty. He was one of the first on the scene with the effort to insure pension funds. He is pushing us hard on the matter of accelerating vesting time.

I am sure he will push us either now or later on another very difficult question which is the question of how to manage these enormous pension assets with the greatest social impact. That is a very big problem. He will push us on portability or transferability of pension rights through a pension bank. He will perhaps push us on many other matters. I welcome it. But as far as I am concerned, this bill is a fine beginning. I believe that in terms of work and morale, and the regularization of competition between employers to provide greater assurance of old-age income, we are starting off in an extraordinary way.

We have today quite a remarkable showing between the Finance Committee and the Labor and Public Welfare Committee on this subject.

We cannot accept Senator Hartke's approach. However, I will not for a moment denigrate his effort. The Senator is entitled to all of the credit in the world. However, we feel that we are not able to do what he wants.

Mr. Hartke. Mr. President, how much time do I have remaining?

The Presiding Officer. The Senator from Indiana has 24 minutes remaining.

Mr. Hartke. Mr. President, the Senator from New York and the Senator from New Jersey have been champions in this field.

I will point out to the Senator from New Jersey that with respect to one matter which the Senator from Wisconsin was talking about when he said that this was the same issue as in the Jackson amendment, that that is not true.

The Jackson amendment was directed at involuntary cutoffs, involuntary disassociations from work by things such as plant shutdowns. Otherwise his amendment in no way was a modification of the bill or

a modification of the committee amendment. However, the philosophy behind the amendment deals with the basic problem of trying to eliminate the threat that the welfare people will come up here and face us in the future.

As the committee report says, the median income in the present pension plan is $99 a month, less than $100 a month. That means that today, with social security, that a man is placed on welfare.

If we take the Grubbs case study for range of increase in the pension plan costs for mandatory vesting provisions, which study was made at the request of the Committee on Labor and Public Welfare, it shows the range of increase in cost as a percent of payroll that the committee proposal under part A, item 4, is 25 percent in 5 years and 100 percent in 15 years.

Mr. President, I ask unanimous consent that the entire study be printed in the Record.

There being no objection, the study was ordered to be printed in the Record, as follows:

RANGE OF INCREASE IN PENSION PLAN COSTS FOR MANDATORY VESTING PROVISIONS

[In percent]

	Present vesting—			
	None	Moderate	Liberal	All plans
Percentage of pension plan members covered under such plans	23	56	21	100
Range of present plan cost as a percent of payroll	1.8–11.2	2.2–12.5	2.2–12.7	1.8–12.7
Range of increase in cost as a percent of payroll:				
A. No past service vested:				
1. 30 percent at 8 yr, 100 percent at 15	.2–.6	0–.2	0–0	0–.6
2. 25 percent at 5 yr, 100 percent at 20	.2–.5	0–.2	0–.1	0–.5
3. Same as No. 2, after age 30	.2–.5	0–.2	0–.1	0–.5
4. 25 percent at 5 yr, 100 percent at 15	.2–.6	0–.2	0–.1	0–.6
5. 100 percent at 10	.2–.6	0–.2	0–0	0–.6
6. 100 percent at 5 yr, after age 25	.2–.7	.1–.4	0–.2	0–.7
7. Rule of 50	.2–.7	0–.3	0–.2	0–.7
B. All past service vested:				
1. 30 percent at 8 yr, 100 percent at 15	.2–1.5	.1–.2	0–0	0–1.5
2. 25 percent at 5 yr, 100 percent at 20	.2–1.5	.1–.2	0–.1	0–1.5
3. Same as No. 2, after age 30	.2–1.5	0–.2	0–.1	0–1.5
4. 25 percent at 5 yr, 100 percent at 15	.2–1.5	.1–.2	0–.1	0 1.5
5. 100 percent at 10 yr	.2–1.5	0–.2	0–0	0–1.5
6. 100 percent at 5 yr, after age 25	.3–1.6	.1–.4	0–.2	0–1.6
C. Past service vested for members age 45 and over:				
1. 30 percent at 8 yr, 100 percent at 15	.2–1.3	.1–.2	0–0	0–1.3
2. 25 percent at 5 yr, 100 percent at 20	.2–1.3	.1–.2	0–.1	0–1.3
3. Same as No. 2, after age 30	.2–1.3	0–.2	0–.1	0–1.3
4. 25 percent at 5 yr, 100 percent at 15	.2–1.3	.1–.2	0–.1	0–1.3
5. 100 percent at 10 yr	.2–1.3	0–.2	0–0	0–1.3
6. 100 percent at 5 yr, after age 25	.3–1.4	.1–.4	0–.2	0–1.4
Range of increase in cost as a percent of present plan cost:				
A. No past service vested:				
1. 30 percent at 8 yr., 100 percent at 15	3.0–25.0	0–6.0	0–1.0	0–25.0
2. 25 percent at 5 yr., 100 percent at 20	3.0–23.0	0–7.0	0–3.0	0–23.0
3. Same as number 2, after age 30	3.0–22.0	0–6.0	0–2.0	0–22.0
4. 25 percent at 5 yr., 100 percent at 15	3.0–25.0	0–7.0	0–3.0	0–25.0
5. 100 percent at 10 yr	3.0–26.0	0–7.0	0–0	0–26.0
6. 100 percent at 5 yr., after age 25	3.0–30.0	1.0–15.0	0–7.0	0–30.0
7. Rule of 50	3.0–28.0	0–12.0	0–5.0	0–28.0
B. All past service vested:				
1. 30 percent at 8 yr., 100 percent at 15	5.0–57.0	1.0–8.0	0–1.0	0–57.0
2. 25 percent at 5 yr., 100 percent at 20	5.0–56.0	1.0–8.0	0–3.0	0–56.0
3. Same as number 2, after age 30	5.0–55.0	1.0–6.0	0–2.0	0–55.0
4. 25 percent at 5 yr., 100 percent at 15	5.0–58.0	1.0–8.0	0–3.0	0–58.0
5. 100 percent at 10 yr	5.0–58.0	1.0–9.0	0–0	0–58.0
6. 100 percent at 5 yr., after age 25	6.0–59.0	1.0–17.0	0–7.0	0–59.0
C. Past service vested for members age 45 and over:				
1. 30 percent at 8 yr., 100 percent at 15	5.0–47.0	1.0–6.0	0–1.0	0–47.0
2. 25 percent at 5 yr., 100 percent at 20	5.0–46.0	1.0–7.0	0–3.0	0–46.0
3. Same as number 2, after age 30	5.0–45.0	1.0–6.0	0–2.0	0–45.0
4. 25 percent at 5 yr., 100 percent at 15	5.0–48.0	1.0–7.0	0–3.0	0–48.0
5. 100 percent at 10 yr	5.0–48.0	1.0–8.0	0 0	0–48.0
6. 100 percent at 5 yr., after age 25	6.0–49.0	1.0–16.0	0–7.0	0–49.0

Mr. Hartke. Mr. President, under the present vesting, the rate of increase in cost as a percent of payroll is two-tenths of 1 percent. We are asking for that still. However, if we take item 6 under part A, it is 100 percent after 5 years, after age 25. That is the proposal as made. It is only four-tenths of 1 percent. The cost item should not be of great concern.

I am fully aware of what the UAW does. I find myself in a rather peculiar stance. If the employees of the UAW knew that they had a 10-year vesting they might not be so happy in accepting the pension plan.

The UAW has the agreement presented to them. This part of the agreement is not presented to them. They have a lump-sum agreement. Therefore, they cannot accept a portability agreement. And here we have the employers of the Nation and the managers of the union who want the employees in this one particular industry to do this.

If we really believe in a philosophical approach and in mobility of the labor force, and if we really believe that we should not have economic slavery in the United States, we should not do this. The system should be changed. To come here and say that the Senate is going to put its stamp of approval on economic slavery is a far cry from that.

I know that in the committee the question was raised as to the employer needing this kind of leverage to make sure the employee stays with him. That is the contrary of what our country stands for. We have a democratic society where men should not be required to be an employee of any man.

I am fully aware that the committee and the managers of the bill have the votes to successfully take this measure down.

I believe in all good conscience that this is a position which should be taken and is one which is in this best interests of the Nation. It is not prohibitive in cost. It would be at the very heart of making this a true pension reform bill, instead of only advertising it as a pension reform.

Mr. Williams. Mr. President, I yield myself 1 minute.

Mr. President, persuasive arguments have been made in favor of the amendment. We feel very consciously and earnestly that we will not have basic reform looking forward to even broader pension reform if this amendment is agreed to.

Not having any further requests for time, I yield back the remainder of my time.

Mr. Hartke. Mr. President, I yield back the remainder of my time.

The Presiding Officer. All time has been yielded back. The question is on agreeing to the amendment of the Senator from Indiana. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. Robert C. Byrd. I announce that the Senator from Michigan (Mr. Hart) is necessarily absent.

Mr. Griffin. I announce that the Senator from Utah (Mr. Bennett) is absent on official business.

I also announce that the Senator from Oklahoma (Mr. Bellmon) and the Senator from Kansas (Mr. Pearson) are absent because of illness.

I further announce that the Senator from Arizona (Mr. Goldwater) and the Senator from Ohio (Mr. Saxbe) are necessarily absent.

The result was announced—yeas 9, nays 85, as follows:

[No. 398, Leg.]

YEAS—9

Abourezk	Gravel	Kennedy
Bayh	Hartke	Magnuson
Biden	Jackson	Metcalf

NAYS—85

Aiken	Fannin	Moss
Allen	Fong	Muskie
Baker	Fulbright	Nelson
Bartlett	Griffin	Nunn
Beall	Gurney	Packwood
Bentsen	Hansen	Pastore
Bible	Haskell	Pell
Brock	Hatfield	Percy
Brooke	Hathaway	Proxmire
Buckley	Helms	Randolph
Burdick	Hollings	Ribicoff
Byrd, Harry F., Jr.	Hruska	Roth
Byrd, Robert C.	Huddleston	Schweiker
Cannon	Hughes	Scott, Pa.
Case	Humphrey	Scott, Va.
Chiles	Inouye	Sparkman
Church	Javits	Stafford
Clark	Johnston	Stennis
Cook	Long	Stevens
Cotton	Mansfield	Stevenson
Cranston	Mathias	Symington
Curtis	McClellan	Taft
Dole	McClure	Talmadge
Domenici	McGee	Thurmond
Dominick	McGovern	Tower
Eagleton	McIntyre	Tunney
Eastland	Mondale	Weicker
Ervin	Montoya	Williams
		Young

NOT VOTING—6

Bellmon	Goldwater	Pearson
Bennett	Hart	Saxbe

So, Mr. Hartke's amendment was rejected.

Mr. JAVITS. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. MANSFIELD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Several Senators addressed the Chair.

* * * * * * *

RETIREMENT INCOME SECURITY FOR EMPLOYEES ACT

The Senate continued with the consideration of the bill (S. 4) to strengthen and improve the protections and interests of participants and beneficiaries of employee pension and welfare benefit plans.

Mr. HART. Mr. President, in July I introduced the Retirement Benefit Fund Act with the hope of making the point that pension reform begins rather than ends with the legislation we consider today.

Pension reform is a complicated business, and we can all understand a desire to put the subject behind us for a long time.

However, to do that would be to fail the many millions of American workers who will not benefit from the reforms we pass today.

That view does not detract from the importance of acting now on legislation setting vesting and funding requirements, fiduciary standards, and establishing portability and reinsurance programs.

Such provisions are needed to protect those long-service employees covered by pension plans who lose out, because their employer shuts the plant gates, or because the pension plan goes broke, or because of unduly restrictive qualification requirements.

Even a layman can understand, however, that these changes will not reform the basic approach of most of today's pension programs which says that many are not served so a few can benefit.

Even a nonexpert can understand the figures which show that as many as three of five workers in the private nonfarm sector do not participate in pension programs because they work for employers who do not have retirement plans—and that the proposed reforms will do little to improve these figures.

Neither will the legislation likely to pass Congress this year provide full equity for the worker who changes jobs often and for good reasons, nor for all surviving spouses of pension programs participants.

The limitations of the reforms now being discussed in Congress are the limitations of a private system based on the premise that large numbers of persons must lose out if others are to benefit. The proposals under study seek to reduce the number of persons losing out by striking a balance between the interests of employees in more secure pensions and the cost to employers of providing such pensions.

We can argue whether the correct balance has been struck, but without challenging what some have called the "lottery" premise on which the present system rests, large numbers of people will continue to lose out.

Looking toward a future of an even more mobile work force and of an ever greater demand for adequate and secure retirement programs, even the layman begins to understand why we need a pension system based on including all rather than excluding many.

And we cannot get there unless we come up with a system that insures an employee that he will benefit from every pension contribution made on his behalf.

The Retirement Benefit Fund Act seeks to reach that goal while continuing a private pension system.

I will not take time today to review the explanation I made when the proposal was introduced.

But I do want to renew my plea that we understand that if we are to have a pension system which meets the needs of the future, the action we take today is the start and not the end of reform.

Mr. Domenici. Mr. President, today I would like to urge my colleagues' support for the Retirement Income Security for Employees Act of 1973, a bill designed to protect the private pension of millions of American working men and women.

This bill is the amalgam of many different proposals heard jointly by the Senate Labor Committee and the Finance Committee and, in

my opinion, it represents a major breakthrough in retirement security for the millions of American workers who are now covered by corporate or self-employed plans. With its passage and enactment, we will be affirming our promise to insure that economic disaster does not befall those who have worked to earn their pensions.

For too long and for too many workers, the promise of pension benefits upon retirement has been an illusion and, indeed, a hoax.

For 3 years Congress conducted a comprehensive study of the private pension system in this country. The study was conducted by the Subcommittee on Labor pursuant to three successive resolutions of the Senate and was undertaken to ascertain the need for statutory protections for workers' pension programs and to formulate appropriate corrective legislation.

This measure is designed to eliminate the deficiencies which our study identified in the existing private pension system. Its basic goal is to assure workers that they will receive the promised pension benefits earned for their retirement during their working lives. It also responds to the proven need for a comprehensive and meaningful reform of our private pension system. It proposes fair, feasible, and effective regulatory measures which will fulfill the fundamental purpose of a pension.

The time for meaningful pension reform is long overdue. The bill now before the Senate is a critical first step toward assuring millions of Americans adequate retirement security.

This bill before us today, as I understand it, would make necessary reforms in vesting, funding, insurance, portability, fiduciary, and disclosure standards, as well as allowing for adequate remedies when a worker has been clearly abused. More specifically, the bill would—

Require employers to put sufficient money in a plan to pay promised benefits;

Establish a Federal insurance program to guarantee payment of benefits if the plan was canceled without sufficient funds;

Make a start on a program to permit workers to transfer their pension rights from job to job; and

Establish strict standards of conduct for pension fund managers to prevent conflicts of interest and mishandling of funds.

At a minimum there are some 30 million workers affected by private pension plans and, in my judgment, that number will be expanded by the provisions of this bill to at least 10 to 20 million more, which would represent a very large majority of the work force of the United States.

While there can be no doubt that our private pension system has well served the needs of many workers, our study found that for countless others, the expectation of retirement benefits has proven to be built on sand.

One example of this type which has been called to my attention is that of a Mr. Robert Pratt of Hudson, N.Y., who in 1971 was laid off by his employer, the Gifford-Wood Co. Mr. Pratt had worked 47 years for this company and was to retire within 1 year at the age of 65.

However, in June 1972, Gifford-Wood was sold to another firm, and its pension plan was terminated—3 months before Mr. Pratt's 65th birthday. When he applied for retirement benefits, it is my understanding that Mr. Pratt was told he would receive no benefits although he had 47 years of service.

In addition, perhaps the most famous failure of all in the private pension system occurred in 1964 when Studebaker closed its plant in South Bend, Ind. In this case 4,500 employees lost 85 percent of their earned pension benefits. This was an economic catastrophe to the individuals involved and to the entire community of South Bend.

Each of us has specific cases in mind where some aspect of the private pension system has not worked the way it should. These examples reflect the difficulties of 23 percent of all workers covered by private pension plans—until the day they retire, if they are allowed to. Indeed, two-thirds of all pension plan participants at this moment have no vested right in their plan. They are not covered if the company they work for goes bankrupt or if the workers are laid off just prior to their receiving any retirement annuities. The simple fact is that at the present time, there is no law which guarantees that the pension promised in past years, for which workers have devoted a lifetime of loyal service, will be paid.

The time for meaningful pension reform is long overdue. The bill now before the Senate is a critical first step toward assuring millions of Americans of adequate retirement security.

AMENDMENT NO. 484, AS MODIFIED

Mr. Hartke. Mr. President, for the information of the Senate, I have four amendments to offer for a voice vote. They will not take very long.

I send amendment No. 484, as modified, to the desk and ask that its reading be dispensed with.

The Presiding Officer. (Mr. Johnston). Without objection, it is so ordered, and further reading of the amendment will be dispensed with. The amendment will be printed in the Record.

The text of the amendment is as follows:

On page 64, srike out lines 8 through 20 and insert in lieu thereof the following:

"(11) A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that a participant who is married will receive the benefit payable as an annuity under the plan in the form of a joint and survivor annuity unless in writing not to receive the benefit in such form, and that the survivor annuity payable will not be of the annuity which would have been payable to that participant had he so elected."

Mr. Hartke. Mr. President, widows are the oldest and the poorest of the aged. Although social security benefits for widows have been improved, they—widow and widower benefits—still only average $155 a month—or $1,860 a year. That may exceed some bureaucrat's definition of poverty, but it surely fails to meet the actual needs of most widows.

What I seek to do is to see that the widow's benefit is 50 percent of her husband's annuity which has not been actuarily reduced. A family works as a single unit. The wife contributes support at home so the husband may work. Therefore, it is althogether fitting and proper

that in the case of a deceased husband, the widow should receive 50 percent of his benefit.

The husband has earned his pension and his wife has a right to 50 percent of it.

Mr. President, there are two deficiencies here. One of them is that if the husband wants the widow to have any of his benefits he had to make an affirmative election in favor of that situation. That generally is not done. Two, at the present time, in order for the widow to receive any benefits there has to be a reduction in the amount of the benefits that the retiree himself will receive. This incorporates the situation the actual retiree will receive his benefits until he dies and the widow will receive 50 percent of the benefits as long as she lives.

Mr. WILLIAMS. Mr. President, I should like to describe to the Senate the provision that is in the bill before us. This does provide that no less than 50 percent is mandated to the widow. The only additional requirement is that if the participant does not want that to happen, he had to take affirmative action. In other words, if nothing is done, the survivorship benefit will be there.

Mr. HARTKE. What has happened in the bill?

Mr. WILLIAMS. On page 64——

Mr. HARTKE. What has happened is that there is an actuarial reduction of the retiree's benefits; is that not correct?

Mr. WILLIAMS. It could be. The plan could have a reduction where there is a survivorship provision. It does not demand it. The legislation does not say that.

Mr. HARTKE. I understand that. There are lots of things in the legislation that do it that way. These are minimum standards under the bill which provides simply that there shall be a 50-percent benefit——

Mr. WILLIAMS. There would be a survivorship benefit and of no less than 50 percent and that will prevail unless affirmatively waived and in writing.

Mr. HARTKE. Yes, but the difference is, simply, that there is permission for actuarial deduction of the retiree's benefits. These are precluded under the bill.

Mr. WILLIAMS. I have not seen the Senator's amendment where he provides that there should not be any reduction. Is that in the Senator's amendment?

Mr. HARTKE. That is right. In other words, under my amendment—and I would hope the Senate would want to accept it—what it provides for is that the retiree will receive his benefits without actuarially having them reduced.

Mr. WILLIAMS. I am advised by the staff that that automatically disqualifies the Federal system.

Mr. HARTKE. Can the staff, can someone show me where it says that in the bill? I do not read it. I see no prohibition on any actuarial reduction.

Mr. WILLIAMS. That would be the effect of the Senator's amendment as we read amendment No. 484.

Mr. HARTKE. That is right. The effect would be to provide that there cannot be an actuarial reduction of the benefits and that the widow will receive 50 percent.

Mr. WILLIAMS. The Senator is out of step and incompatible with the Federal system which is considered to be a model in this regard.

Mr. HARTKE. All I am saying here is, even though the Senator may be talking about being out of step, that I am talking about what I want to do.

Mr. WILLIAMS. The Senator wants to get himself out of step with one of the best retirement systems we have.

Mr. HARTKE. All I am saying is that a retiree shall have his benefits and that 50 percent of the benefits which go to his widow shall not cause his own benefits to be reduced. Under the bill as it is written at the present time, the pension plan can call for an actuarial reduction of the amount of the bill. If that is what the Senator intends, all right, all he has to do is to accept the amendment.

Mr. WILLIAMS. Again, we are in a complicated area here. The Senator's amendment says that the trust shall not constitute a qualified plan under section 401 unless it meets your provision. Now I am here from the Committee on Labor and Public Welfare and not too familiar with the tax jurisdiction of the Finance Committee, but as I understand it from the staff of the joint committee, your provision would raise serious questions about qualification of the Federal retirement system.

Mr. HARTKE. I am talking about this law. If the Senator does not want to accept the amendment just have a vote on it. That is rather elementary. I am not arguing that. All I am trying to do is to provide that the widow get her 50 percent and the retiree get his 100 percent of benefits. If the Senator does not want to do that, he does not have to.

Mr. WILLIAMS. This would reach out and disqualify some plans which are now qualified.

Mr. HARTKE. That is true of practically everything in the bill.

Mr. WILLIAMS. Including the entire Federal civil service plan.

Mr. HARTKE. There is hardly a plan in the United States that is not going to have to be changing its operations as a result of this legislation. What the Senator is saying is that this will require some changes in the plan. I agree with that. I am not arguing that. We are not passing this legislation just to pass the time of day, but to pass it, hopefully, with some improvements in the pension system. If the Senator does not care to include the pension system, there is no reason for the law.

Mr. WILLIAMS. This, it seems to me, is incomplete unless the Senator is prepared to back it up with changes in other basic law.

Mr. HARTKE. Like what?

Mr. WILLIAMS. The law governing the Federal civil service retirement system.

Mr. HARTKE. So far as I am concerned, all I am trying to do here is to write minimum standards for a pension plan, period.

Mr. WILLIAMS. In the process, the Senator is getting other laws confused——

Mr. HARTKE. I am not confusing anyone. This is not a confusing amendment. It says simply that a retiree is entitled to 100 percent of his benefits and his widow is entitled to her 50 percent of the benefits. Under some plans today, in order for the widow to get 50 percent of the retiree's benefits, the retiree's benefits are reduced in his lifetime, and I am saying, "No."

Mr. WILLIAMS. Mr. President, I am advised that the way this amendment is drafted, it would have an effect well beyond the simple

and meritorious situation the Senator wants to reach, and it would disqualify many qualified plans, including the Federal civil service plan.

Mr. HARTKE. I did not know that this would affect the Federal system in any way.

Mr. WILLIAMS. It would.

Mr. HARTKE. No. My understanding is that we are dealing with private pension plans.

Mr. WILLIAMS. It says that a trust shall not constitute a qualified trust, and the Federal civil service system is under the qualified trust provisions. So it would have an effect that I am certain the Senator does not want.

Mr. HARTKE. I am interested in private plans. What I want to do is to provide a 100 percent for the retiree, 50 percent for the widow, and not have his 100 percent affected. I am not trying to change the civil service system. I am dealing with private pension plans.

With respect to the argument that this amendment would affect some plans, if this bill does not change any plans, then the bill is a non sequitur if I have ever seen one. If anything will not be changed with this bill, then let us forget the legislation.

Mr. JAVITS. Mr. President, will the Senator yield?

Mr. WILLIAMS. I yield.

Mr. JAVITS. I have read this amendment, and I really do not want to read it aloud, because I do not think it even says what the Senator from Indiana wants it to say. Words have been left out, and so forth.

Let us assume, if we understand it, that what the Senator wants is that the widow receive the same pension as the participant from whom she is widowed. Our answer to that is, "Sure," as the Senator from New Jersey has said. That would be delightful, except for all the same reasons that we cannot have a 100-percent vesting and many other things. In starting this effort, we cannot load it with this kind of provision, which the Senator wants—to wit, that the surviving widow would get exactly the same annuity as her deceased husband.

The answer is that it is not done for us, as Senators, under our own plan; it is not done under the Federal civil service plan; it is not done under the overwhelming majority of private plans.

Again, we have to draw a line somewhere as to what will inhibit private plans. We have reached out for what we consider to be an enlightened standard, which is a minimum of not less than 50 percent. That is the best we have been able to do. I think the Senator is right when he says that if we do not want to do what he wants to do, we should vote. I suggest that.

Mr. HARTKE. This proposal says that a trust shall not constitute a qualified trust under this section. It does not say anything about the civil service system. If a Senator does not want to do this, he should vote "nay." If he wants to do this, he should vote "aye."

Mr. TAFT. Mr. President, will the Senator yield?

Mr. JAVITS. I yield.

Mr. TAFT. I should like to point out that this amendment would interfere with the individual rights of the pension participants. What is being proposed by this amendment, in my opinion, is that, in effect, we are telling the participants who come into a plan they have no

choice on this point. They would be required to accept the approach in the amendment. This amendment would vastly increase the cost of pension plans and may result in such cost that would prohibit creation of any pension plan. Management and labor organizations prefer a life annuity approach.

Under the present law joint survivorship provisions may be included. This amendment would prevent any discretion on this point.

Mr. HARTKE. In substance, what the Senator from Ohio is probably confusing is the fact that what I am saying here is that this would provide for a waiver as long as he does it in writing.

The fact is that if Senators vote for this measure, they are doing exactly what the Senator from Ohio is protesting against. What you are going to do on the vesting, on eligibility, on participation, and on funding is to make these pension plans qualify, or they will have to give up their tax benefit. This is a qualification of minimum standards.

The Senator from Ohio is arguing against any modification of the system, but he is really voting against the bill. He ought to vote against the bill.

Mr. President, I yield back the remainder of my time.

Mr. WILLIAMS. I yield back the remainder of my time.

The PRESIDING OFFICER. All time on the amendment has been yielded back.

The question is on agreeing to the amendment of the Senator from Indiana.

The amendment was rejected.

Mr. HARTKE. Mr. President, I send to the desk a modification of my amendment No. 482.

The PRESIDING OFFICER. The amendment, as modified, will be stated.

The assistant legislative clerk proceeded to read the amendment.

Mr. HARTKE. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered; and, without objection, the amendment will be printed in the record.

The amendment, as modified, is as follows:

On page 226, line 23, following "Act," strike all that follows and insert in lieu thereof the following:

"The Secretary of Labor is authorized and directed to hear and decide disputes between employees, retirees or survivors and the employer, union, or trustee arising under or in connection with plans relating to (1) alleged violations of this subsection and (2) questions pertaining to individual eligibility, entitlement to benefits, computation of credits or benefits or any other employee, retiree or survivor claim or allegation of improper conduct by his employer or any plan trustee jeopardizing employee, retiree or survivor interests provided that such a proceeding shall not displace the grievance-arbitration proceedings provided by a collective bargaining agreement if its procedure and proceeding would satisfy the arbitration deferral principles of the National Labor Relations Board were the dispute to constitute an unfair labor practice.

"Notice and Procedure—Upon the application of an employee, retiree or survivor for a proceeding under this section, the Secretary shall notify the employer, and/or plan administrator concerned with respect to the matters complained of and the relief requested. The proceedings shall be held, on notice to the parties, at the time and place designated by the Secretary before hearing examiners appointed pursuant to the Administrative Procedure Act. The Secretary is empowered to promulgate rules and regulations for such hearings and proceedings pursuant to the Administrative Procedure Act. It shall be sufficient to record the formal hearing stage by tape recorder, provided that a transcript be-

comes available for use on appeal before the Secretary or appeals to the courts, which shall be governed by the Administrative Procedure Act.

"Powers—The Secretary shall attempt to secure voluntary compliance with any decision made by him under this section; but he shall have the power to issue an order directing a person who is a party to the proceedings to comply with the terms of any such decision. For the purpose of any hearing conducted by the Secretary under this section, he shall have the authority conferred by the provisions of sections 9 and 10 of the Federal Trade Commission Act (relating to the attendance and examination of witnesses and the production of books, papers, and documents). Any district court of the United States within the jurisdiction of which any proceeding under this section is held, may, upon petition by the Secretary, in the case of a refusal to obey a subpena or order of the Secretary issued under this section, issue an order requiring compliance therewith; and any failure to obey the order of the court may be punished by the court as a contempt thereof.

"The provisions of this section shall take effect 90 days from the enactment of this Act."

Mr. Hartke. Mr. President, this amendment is intended to protect employees against improper employer or pension trustee action. The key to effective pension reform is early vesting, but a vesting provision is no better than the protection employees have against improper discharge—including layoff—discipline or other discrimination that puts an employee out of a job before vesting is achieved, thereby defeating his pension claim. In addition, substantive rights to promote pension eligibility, ample benefits, or other pension reform objectives are no better than the procedure available for their enforcement.

My amendment builds upon section 699(a) of the substitute amendment to S. 4 by providing a ready and inexpensive form of administrative relief for employees, retirees, and survivors who claim the violation of section 699(a) or other improper action jeopardizing pension rights.

Especially in the absence of union assistance, employees' pension rights cannot be asserted effectively if their vindication requires resort to the courts. Employees need relatively informal administrative procedure—much like the grievance-arbitration procedures now so common in industry—if they are to have a chance of asserting such rights effectively. Employees in nonunion situations do not have such protection, and many grievance-arbitration procedures do not cover the kinds of improper conduct governed by the bill and section 699(a) commonly, questions relating to pensions and pension eligibility are specifically excluded from arbitration. Where the collective agreement does cover the dispute, and the National Labor Relations Board would defer to arbitration if the alleged improper action constituted an unfair labor practice, arbitration would take place rather than the procedures provided by the amendment. The hearings and appeals would be governed by the Administrative Procedure Act.

Mr. Robert C. Byrd. Mr. President, may we have order in the Senate?

The Presiding Officer. The Senate will be in order. Senators will please take their seats.

Mr. Williams. I yield myself 2 minutes.

Mr. President, this amendment would require the Department of Labor, as I understand it, to provide an administrative procedure for resolving disputes between plan participants and the trustee concerning entitlements to benefits.

Mr. Hartke. The difference between this proposal and the way the bill reads at the present time is that one has to go to court for a remedy. A single employee has to go to court. Under this bill, the Secretary of Labor has to set up a procedure under the Administrative Procedure Act, without going to court.

Mr. Williams. On what kinds of cases?

Mr. Hartke. Any type of discharge or arbitrating action, denying the employee his pension rights; being laid off, fired, discriminatory actions, improper discharge, discipline—things of that nature.

Mr. Williams. We do provide that the Secretary of Labor would have authority to bring suit to obtain relief in many of the areas to which the Senator refers. That is in the proposed legislation.

Mr. Hartke. The difference is that the Secretary of Labor is authorized in the bill to bring suit. The procedures with respect to union employees would be handled by arbitration.

Mr. Williams. The bill also provides for arbitration within every pension plan.

Mr. Hartke. That is correct, but that is not affected by this amendment.

Mr. Williams. And these are the kinds of situations that the Senator presented that need a decision. The question is whether to go this route with a new and very large bureaucracy within the Department of Labor or whether we should provide exclusively in this area, as the bill does, for arbitration within the pension plan itself.

Mr. Hartke. No, that is not exactly correct.

Mr. Williams. This would require a great number of hearing officers, and the whole business.

Mr. Hartke. There is no question about that. This is a common complaint. In the legal profession there is no lawyer who will accept most of these cases because the lawyer is going to represent the union, the company, or the pension fund. But when this man is laid off and is a nonunion employee, he will have trouble finding a lawyer. There is no one who will be pleading his case for him. My amendment would place the responsibility on the Department of Labor to look out for that nonunion employee.

Mr. Williams. I feel that the situation the Senator described can be met by both the Secretary of Labor and in other areas by the arbitration provisions in the bill. It seems to me to be a new layer of duplication, which is vastly expensive and complex, and it would create a great new bureau within the Department of Labor.

Mr. Hartke. I hear what the Senator is saying.

Mr. Williams. The rights of the workers are fully protected under this bill.

Mr. Hartke. I hear what the Senator is saying, but I hope that after this proposal is rejected and this reform law has gone into effect that the Committee on Labor and Public Welfare would make a study of the abuses of these people who work for 7, 10, 11, 12 years and who are not ready for pension plans and find themselves on the streets. Find a Secretary of Labor who is going to take that case to court. The Senator will not be able to find him.

Mr. President, I am ready to yield back my time.

Mr. Williams. I yield back my time.

The PRESIDING OFFICER. All time is yielded back. The question is on agreeing to the amendment as modified.

The amendment was rejected.

Mr. HARTKE. Mr. President, I send to the desk a modification of my amendment No. 483.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk proceeded to read the amendment.

Mr. HARTKE. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered; and, without objection, the amendment will be printed in the Record.

The amendment ordered to be printed in the Record is as follows:

On page 19, beginning with line 13, strike all through and including page 20, line 19, and insert in lieu thereof the following:

"(B) YEARS OF SERVICE.—The Secretary shall prescribe standards, consistent with the purposes of this Act, governing the number of working hours, days, weeks, or months, which shall constitute a year or part of a year of covered service, or a break in service for purposes of this Act. In no case shall a participant's time worked in any period in which he is credited for a period of service for the purposes of this section, be credited to any other period of time unless the plan so provides."

Mr. HARTKE. Mr. President, this amendment provides pension credit for part-time employees.

In many industries, employees typically work only a part of a year, either because business regularly is seasonal or workers are laid off for a substantial period because of occasional slumps in demand, or because—in the case of women—family obligations or work opportunities dictate part-time and part-year employment. Nonetheless, the earnings generated by part-year or part-time work contribute to the family standard of living and require replacement in retirement. In addition, layoffs, illness, and withdrawal from the labor market all cause breaks in service that often are fatal to pension eligibility.

This amendment requires the Secretary to issue rules as to what amount of work will constitute a full year's pension credit and what amounts of part-time and part-year work will earn proportional part-year credits that can be accumulated toward eligibility for vesting.

Mr. President, this does not deal with the problem that the Senator from Nebraska (Mr. Curtis) presented before dealing with participation.

Mr. JAVITS. Mr. President, I yield myself 5 minutes on this question.

The PRESIDING OFFICER. The Senator from New York is recognized.

Mr. JAVITS. Mr. President, we do have provisions in the bill which give a full year of service for 5 months within the year worked, based on 80 hours of work a month. That would start in 1982. That provides a very fair measure of part-time work. It is only 20 hours a week. Before that time, the matter will be subject to regulation by the Secretary of Labor. We think this is an adequate provision to take care of part-time work that should be recognized under pension plans. I believe the amendment should be rejected.

Mr. HARTKE. Will the Senator from New York answer this question?

Mr. JAVITS. Yes.

Mr. HARTKE. Will the Senator refer, please, to page 19?

Mr. JAVITS. Of the bill?

Mr. HARTKE. Yes; page 19, subparagraph (i). The year will be whatever the Secretary decides.

Mr. JAVITS. Before 1982. That is correct.

Mr. HARTKE. On page 20, subparagraph (ii), after December 31, 1981, the year will be 5 months, if the employee is employed at least 80 hours in each of such 5 months.

Mr. JAVITS. That is correct.

Mr. HARTKE. Should these things be reversed, much more flexibility is offered. Why should they not be?

Mr. JAVITS. The reason why they should not be reversed is, as we do in so many other things, that we are entering into a new program with cost consequences. We had to allow for experience. That is why we believe we should have this approach. That is why I oppose the amendment.

Mr. HARTKE. In other words, there should be a difference of criterion.

Mr. JAVITS. It is simply like the criteria in so many other things. We had to defer Title II to vesting for 2 years. It is simply a pragmatic program. We are going ahead with a new program; we are going ahead with a new system.

Mr. HARTKE. Mr. President, I am ready to yield back the remainder of my time.

Mr. JAVITS. I yield back my time.

The PRESIDING OFFICER. All time has been yielded back. The question is on agreeing to the amendment of the Senator from Indiana (Mr. Hartke). (Putting the question.)

The amendment was rejected.

AMENDMENT NO. 508

Mr. HARTKE. Mr. President, the last amendment I offer is No. 508. I ask unanimous consent that its reading be dispensed with.

The PRESIDING OFFICER. Without objection, the reading of the amendment will be dispensed with, and without objection, the amendment will be printed in the Record.

The amendment ordered to be printed in the Record is as follows:

On page 71, beginning with line 8, it is proposed to strike out through line 23 on page 87, and insert in lieu thereof the following:

TITLE III—PORTABILITY

SEC. 301. FINDINGS.

The Congress finds that it is necessary, in order to provide for the public welfare through the protection of the pension rights of American workers, to establish a program under which an individual's vested right to a deferred benefit under a pension plan may be transferred, upon his separation from employment, to a national program in which it will be held in trust for him payable upon death, disability, or his attaining normal retirement age, and to provide a limited national pension program of which certain small businesses may avail themselves.

SEC. 302. DEFINITIONS.

(a) For purposes of this title—

(1) "pension plan" means—

(A) a pension plan described in section 401(a) of the Internal Revenue Code of 1954;

(B) an annuity plan described in section 403 (a) or (b) of such Code;

(C) a bond purchase plan described in section 405(a) of such Code;

(2) "participant" means an employee who is covered by a pension plan;

(3) "administrator" means the person or persons described in section 3(15) of the Welfare and Pension Plans Disclosure Act; and

(4) "State" means any of the States of the United States or the District of Columbia.

SEC. 303. PROPOSALS FROM PRIVATE INDUSTRY.

The Secretary of Labor is authorized to receive proposals during the first 9 months after the date of enactment of this Act for the establishment of a program meeting the requirements of section 301. Not later than the end of the 10th calendar month ending after the date of enactment of this Act the Secretary of Labor shall transmit an analysis of all proposals received under this section together with his comments on them and any recommendations, including recommendations for legislation, with respect to such proposals he may have to the Congress. The Secretary of Labor shall furnish copies of any such proposals to the Secretary of the Treasury whenever he receives them and the Secretary of the Treasury shall submit his analysis and comments with respect to such proposals to the Congress not later than the end of such 10th month.

SEC. 304. ESTABLISHMENT OF PROGRAM.

(a) IN GENERAL.—If, within 60 days after the date on which the Secretary of Labor furnishes such proposals to the Congress, there is not reported from any committee of the Congress a measure for the establishment of such a program or, if within 90 days after such proposals are submitted the Congress has not passed and sent to the President a measure to establish such a program, the Secretary of Labor is authorized to establish and operate a program which meets the requirements of section 301.

(b) ELEMENTS OF PROGRAM.—Under any program established by the Secretary under this section—

(1) any employer engaged in a trade or business in or affecting interstate commerce who maintains a pension plan shall register the plan with the program;

(2) an employee who has a vested right to a deferred benefit under a registered pension plan may request that the administrator of that plan transfer an amount equal to the value of that right to the program upon his separation from service with the employer who maintains the plan;

(3) the administrator of a registered pension plan shall transfer the entire amount described in paragraph (2) to the program upon request made by such an employee in not less than equal installments over a period of not more than 5 years together with interest thereon; and

(4) the amount of an employee's interest transferred to the program, together with any income thereon shall be payable to him or his beneficiaries only in the event of his attaining the age of 60 years, upon his death, or upon his becoming disabled (as determined by the Secretary of Labor).

(c) NATIONAL PENSION PLAN FOR SMALL BUSINESSES.—The Secretary of Labor is authorized to establish a pension plan, which shall meet the requirements of section 401(a) of the Internal Revenue Code of 1954, with such terms and conditions as he may determine to be appropriate, under which employers of not more than 300 employees may make contributions on behalf of their employees and under which such employees may make contributions.

(d)(1) ACCOUNT ESTABLISHED.—The Secretary shall establish and maintain a separate account for each separate payment received by the program on behalf of each participant.

(2) ITEMS SHOWN IN ACCOUNT.—An account established under paragraph (1) shall identify the participant for whom it is established and shall show—

(A) the name and address of each registered plan which makes a payment under this title on behalf of the participant in whose name such account is established;

(B) the portion of each such payment which constitutes the amount treated under sections 72, 402(a), and 403 of the Internal Revenue Code of 1954 as the net amount contributed by the participant;

(C) any remaining portion of each such payment; and

(D) the amount which constitutes the income attributable to such account while in the custody of the program.

(c) APPROVAL BY CONGRESS.—

(1) In General.—A program established by the Secretary of Labor under subsection (a) shall not be put into effect unless neither House of the Congress object to its being put into effect under this subsection within 60 days after its proposal. The Secretary shall notify the Congress of the establishment of such program and the 60-way period referred to in the preceding sentence shall begin on the first day in which both Houses of Congress are in excess occurring after the Secretary has so notified each House of the Congress.

(2) Exercise of rulemaking power of the senate and the house of representatives.—The succeeding paragraphs of this subsection are enacted by Congress as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they shall be deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of resolutions described in paragraph (3); and they shall supersede other rules only to the extent that they are inconsistent therewith. They are enacted with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

(3) Resolution.—For the purpose of the succeeding paragraphs of this subsection, "resolution" means a resolution of Congress, which is as follows: "That the________________does not favor the proposed pension portability program transmitted to Congress by the Secretary of Labor on__________.", the first blank space therein being filled with the name of the House in which the resolution is offered and the second blank space therein being filled with the date on which the Secretary's message proposing the program was delivered.

(4) Referral of resolution.—A resolution shall be referred to the Committee on Education and Labor and on Ways and Means of the House of Representatives of the Committees on Labor and Public Welfare and on Finance of the Senate.

(5) Discharge of committee.—If the committee to which has been referred a resolution has not reported it before the expiration of 10 calendar days after its introduction, it shall then (but not before) be in order to move to discharge the committee from further consideration of that resolution, or to discharge the committee from further consideration of any other resolution with respect to the proposed adjustment which has been referred to the committee. The motion to discharge may be made only by a person favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported a resolution with respect to the same proposed rate), and debate thereon shall be limited to not more than 1 hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion is not in order and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to. If the motion to discharge is agreed to or disagreed to, the motion may not be renewed, nor may another motion to discharge the committee be made with respect to any other resolution with respect to the same proposed rate.

(6) Consideration of resolution.—When the committee has reported, or has been discharged from further consideration of a resolution, it is at any time thereafter in order (even though a previous motion to the same effect has been agreed to) to move to proceed to the consideration of the resolution. The motion is highly privileged and is not debatable. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to. Debate on the resolution shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the resolution. A motion further to limit debate is not debatable. An amendment to, or motion to recommit, the resolution is not in order, and it is not in order to move to reconsider the vote by which the resolution is agreed to or disagreed to.

(7) Debatability of motions.—Motions to postpone, made with respect to the discharge from committee, or the consideration of, a resolution and motions to proceed to the consideration of other business shall be decided without debate. Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution shall be decided without debate.

SEC. 305. TAXABILITY OF TRANSFERS TO OR FROM PORTABILITY PROGRAMS

(a) AMENDMENTS TO SECTIONS 402 OF THE INTERNAL REVENUE CODE OF 1954.—Section 402 of the Internal Revenue Code of 1954 is amended by adding at the end thereof the following new subsections:

"(f) TAXABILITY OF TRANSFERS TO PENSION PORTABILITY PROGRAM.—A payment to a portability program established under section 304 of the Retirement Income Security for Employees Act by a pension of an amount representing not less a full discharge liability by that plan with respect to a participant shall not be includable in the gross income of such participant for the taxable year of such participant in which such payment is made.

"(g) TAXABILITY OF PAYMENTS FROM THE PENSION PORTABILITY PROGRAM.—Any amount paid on behalf of a participant from a pension portability program to or with respect to a participant shall be includable in his gross income for the taxable year in which paid to the extent that such amount exceeds the aggregate amount of the related payment to the pension portability program credited to the amount of such participant which is treated as contributed by such participant under subsection (a), section 72, or section 403.

"(h) TAXABILITY OF MANDATORY WITHDRAWAL FROM THE PENSION BENEFIT PORTABILITY FUND.—Any amount paid to a participant under the provisions of section 305(b) of the Retirement Income Security for Employees Act shall be includable in the gross income of such participant to the extent such amount constitutes the amount described in section 304(d) (2) (D) of such Act.".

(b) MANDATORY WITHDRAWALS.—The balance of any account of a participant shall be paid by the program to such participant within 30 days after notification to the Secretary, by the Secretary of the Treasury that the trust or plan (which made a payment credited to such account) has been determined not to be a qualified trust under section 401(a) of the Internal Revenue Code of 1954 or not to be a plan which satisfied the requirements of section 404(a) (2) of such Code at the time such trust plan made such payment.

SEC. 306. INVESTMENT AUTHORITY.

The Secretary of Labor shall enter into contracts with appropriate persons for the management of funds held in trust by the program for participants, and such persons shall invest such funds in securities of corporations organized within the United States and such other securities as those persons shall determine to be appropriate for the purpose of conserving such funds and producing reasonable amounts of income from their investment. Any income or losses produced from such investments shall be credited to or deducted from the accounts of participants in the program in appropriate amounts. Any voting rights derived from securities in which such funds are invested shall be exercised by a board of trustees elected annually, under the supervision of the Secretary of Labor, by participants in the program.

SEC. 307. ENFORCEMENT.

(a) IN GENERAL.—The Secretary of Labor is authorized to bring actions for equitable relief to prevent or restrain violations of duties imposed under this title and under any program established by him under this title.

(b) CIVIL PENALTY.—Any person who fails to perform any such duty shall be liable for the payment of a civil penalty of $500 for each act or omisison constituting such a failure, and each day of continued failure shall constitute a separate offense.

(c) APPEARANCE OF COUNSEL.—In any action brought by him under this title the Secretary of Labor may be represented by counsel appointed by him.

SEC. 308. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Secretary of Labor such sums as may be necessary to carry out the provisions of this title.

THE NEED FOR PORTABILITY

Mr. HARTKE. Mr. President, this amendment deals with the need for portability. The question is very simple. It concerns one of the very difficult problems we have in the whole field of pensions.

Vesting and portability are not the same. Vesting without portability will often prove inadequate because, first, employees will not feel the vested benefit alone is dependable and so may withdraw from the plan, thereby losing valuable credits and more importantly, second, without portability the value of vested credits can be seriously eroded by inflation, and third, a benefit that is vested but not portable is not available in the case of disablement.

THE LIMITS OF VESTING

Vesting means a claim to a future benefit conditioned upon living to normal retirement age, and adequate funds in the plan. The uncertainties introduced by these conditions may persuade an employee in a contributory plan to withdraw his contributions thereby losing the larger volume of the employer's contribution—the cash in hand is worth two in the employer's plan syndrome.

More importantly, without portability the value of a vested benefit can be wiped out by inflation. When an employee separates from a job and is eligible for a vested benefit, the benefit is determined by the plan formula at the time of separation. This means that these years of credited service do not participate in the plan improvements that constantly take place in response to inflation, improved productivity, higher living standards and the difference between the usually conservative earnings rate on reserves assumed as compared with actual experience. As a result, existing employees may be separated involuntarily and receive less for the very same years of service than do employees who stay with the company.

Assume an employee separated with a vested benefit at age 45 payable at age 65—20 years later. Assume a modest annual rate of inflation of 3 percent—modest indeed by current experience. After 20 years, the vested benefit would suffer a 60-percent reduction in value. Put another way, the plan would pay out in dollars worth 60 percent less than when the credits vested.

THE FUNCTION OF PORTABILITY

However, with portability, the plan would pay out the discounted value of the benefit at or soon after the employee separated. The usual low-interest assumption used by actuaries would favor the existing employee—the lower the interest rate assumption, the higher is the discounted sum necessary to produce any given level of benefits. When deposited to the employee's individual account in a clearinghouse, that sum would work to the employee's benefit. It would participate in the actual experience of the economy. Earnings rates would reflect inflation and help the beneficiaries keep up with inflation. These better prospects, plus the account in the name of the employee, would encourage employees to opt for the several dollars of vesting versus the fewer dollars in hand at separation. Moreover, such benefits directly and currently credited to the employee would be available in the event of disability.

HOW PORTABILITY WOULD WORK

Pension portability requires a national pension clearinghouse or regional clearinghouses which coordinate their activities. Its structure is described below.

EMPLOYEE CREDITS

When an employee separates from a job with a vested right the plan would inform the clearinghouse of that fact and pay over to the clearinghouse the present value of the vested benefit under rules and regulations governing such valuation promulgated by the clearinghouse. The rules should provide that large amounts would be payable in installments over a period of 5 years. In this way, the funding of vested benefits would not be unduly favorable to separating employees as compared with continuing employees. In the case of an unfunded plan, the clearinghouse could compel immediate or phased funding of the vested benefit.

The funds thus provided would be deposited to the account of the employee with the vested right and would work for him. The funds would be trust funds invested in common with other such funds with all earnings and improvements in value creditable to the individual. The highly successful Teachers Insurance and Annuity Association does just this for tens of thousands of professors and employees in higher education institutions.

The employee's credits would be payable to him should he become disabled—an advantage not available with conventional vesting. Should the employee die, the credits would be payable as an annuity to his or her spouse or, if there is none, to his/her estate—an advantage not available with conventional vesting.

In most cases, the credits would provide annuity payments to the employee upon retirement and to the employee's survivor after his/her death. Unlike the conventional vested benefit, the benefit would have increased in value and earnings by actively working as an investment for the employee. The erosion of benefits by inflation is becoming one of the most critical problems of pensions. And pensioners are the group in society hardest hit by inflation. Portability through the clearinghouse is the major means of offsetting the evaporation of value of vested benefits.

THE CLEARINGHOUSE—PREFERABLY A PRIVATE UNDERTAKING

The proposed amendment would provide private groups the first opportunity to organize the contemplated clearinghouse. The amendment provides an 18-month period during which private groups would develop proposals. The Secretary of Labor is authorized to provide technical assistance in these efforts. The idea is to have a competition in which private enterprises, such as insurance companies, banks, pension and investment consultants, unions, and consumer groups, would seek to develop proposals that best protect retiree and survivor interests, best protect against conflicts of interest between the clearinghouse and the other enterprises conducted by the

other institutions in which the clearinghouse stockholders have interests and—of great importance—provide for the dispersal of investment and the avoidance of undue concentration of investment power.

On the one hand, the enormous potential profits of the clearinghouse would attract the ingenuity, skill, and attention of the private sector. On the other hand, the need to persuade Congress that its proposal serves employee, retiree, and survivor interests best would tend to stimulate protective elements in the plans. The final protection for such interests is that if no plan is acceptable to Congress, the Secretary would be authorized to institute a federally operated plan. The Federal clearinghouse would be a last resort to be used only if the private sector fails to come up with a fair and workable plan. S. 4 and S. 1179, however, provide no opportunity for a private clearinghouse and, instead, propose clearinghouses that would not do the job.

After the private proposals are submitted to Congress, with the assessments of the Secretary of Labor and the Secretary of Treasury, the Senate Labor and Finance Committees and the House Labor and Ways and Means Committees would be required to hold hearings and to report a bill approving one of the proposals, or rejecting them all. As with the reorganization act, the reports would be required in 90 days and a floor vote would have to take place within 30 days thereafter. In this way, Congress would have to act. Of course, these periods might result in modifications of proposals provided some private group desired to make them, thus the competitive factor would continue to work.

THE ADVANTAGES OF A PRIVATE CLEARINGHOUSE

A private clearinghouse would mobilize much of the varied talent of the private sector to promoting employee pension interests. A few years ago, a White House task force called upon private industry to devise an effective clearinghouse mechanism. This proposal not only echoes that sentiment, but provides the concrete occasion and incentive for that to be done.

It would permit flexible investment of reserves in all sectors of the economy—debt, equities, directly, in new enterprises, and wherever sound investment policy and the interests of retirees lead. In contracts, the clearinghouses of S. 4 and S. 1179 are restricted to Government guaranteed obligations, savings bank, and savings and loan accounts. Such limitations hark back to the long outmoded and long discredited limitation upon trustee and insurance company investments. The sponsors apparently were so afraid of public body investment in the private sector that they hog-tied the clearinghouses in S. 4 and S. 1179—and the Dent bill has the same limitation. Such limitations upon investment would insure that the clearinghouse could not do its basic job—help the value of the vested credits keep pace with inflation and the growth of the economy.

SPREADING PENSION PLAN COVERAGE

Spotty coverage constitutes the greatest weakness of the private pension system. According to the early 1973 "Interim Report—Study of Pension Plan Terminations, 1972" (page 18, note 1) private pension

plans—not including profit-sharing plans—cover only 23 million active employees rather than the 30 or 33 million so frequently talked of. Material from the Social Security Administration points in the same direction—"Employee Benefit Plans, 1972" 36 Social Security Bulletins Nos. 1, 27, 28 (April 1973).

This means that decidedly less than one-half the private work force has pension coverage at any one time. It also means that when employees lose pension-covered jobs, as they constantly do, their chances of finding another pension-covered job are not good.

This is especially true of blue-collar workers who, studies show, frequently end up in poorly paid jobs which also tend to be nonpension covered jobs. The same thing has been happening to engineers, physicists and executives in the recent past as hearings I held in South Bend, Ind., show.

Given the limitations of social security, almost all employees need a private or government pension supplement when they retire. Hence, real pension reform means spreading coverage. Hearings held by the Special Committee on Aging indicate that the largest gap in coverage comes in the area of small business. That is understandable. Small company officials have their hands full. They have neither the time nor the resources to deal with lawyers, accountants, pension consultants, banks or insurance company salesmen and officials—all of them now necessary to the "installation" of a private pension plan. Nor is he assured of a quality product and disinterested guidance. In addition, small companies tend to have short lives and so provide inadequate bases for private pension plans which assume corporate life of 30 or 40 years—as do the funding proposals of S. 4 and S. 1179.

If millions of employees working for thousands of small companies are to obtain dependable, low-cost coverage, they must have available some simple choices that are designed for their purposes and problems, meet their limited time and money budgets, and are dependable because promulgated by an institution of unquestioned probity—the clearinghouse provided for in my amendment.

The proposal would apply to any employer with 300 or fewer employees—which is, in pension terms, a small company. The amendment provides that once covered, a company could remain covered with the national—or regional—plan, so that successful companies that grow would not have to disrupt the established relationship but could do so if that seemed desirable.

The employer, on its own or pursuant to a collective bargaining agreement, would be able to pay over to the plan whatever amounts were to be devoted to pension purposes. The plan would credit them to each individual employee's account. The plan would give credits in proportion to the amounts deposited—just as TIAA does for different salary range groups in higher education.

The plan—whether private or public—could provide for immediate, 100 percent vesting as TIAA does, or condition vesting upon specified service within the requirements of law applicable to all plans.

When an employee separates from a participating company, his credits would already be in the clearinghouse and remain to his account—thereby avoiding the costs and difficulties and possible abuses associated with transferring the values to another employer's plan—as provided in S. 4 and S. 1179.

Simplicity, low cost, dependability, and growth make this proposal a promising means of extending coverage on a voluntary basis.

Mr. President, I really feel that I have discussed most of this subject previously in connection with the different divisions of the bill.

I think I understand that there is unified opposition from the Finance Committee, the Labor and Public Welfare Committee, organized management, and possibly organized labor. Basically, this amendment helps nonunion labor.

Mr. Williams. Is this an amendment of the portability program?

Mr. Hartke. Yes, it is.

Mr. Williams. I have not seen the amendment.

Mr. Hartke. The difference between the amendment and the bill is that the bill has none of the provisions for voluntary portability.

Everyone who understands anything about pensions—and even the Senator from Ohio (Mr. Taft) agreed to this fact—knows that the amount of money going into a pension plan is really the employee's money. But under the bill the employer makes the decision as to whether he is going to have or allow any portability.

Mr. Williams. What does the amendment say? That the Secretary of Labor will look over a lot of proposals and send them back to Congress?

Mr. Hartke. This amendment provides for the private sector to submit to the Secretary of Labor an opportunity to create a portability fund. Then the Secretary would refer those back to Congress within a year's period. The bill provides for a year even under voluntary portability. If the Congress adopts what the Secretary recommends, that would be the plan. Otherwise there would be a mandatory portability fund.

Mr. Williams. We recognize the need for portability in the bill, and provide a mechanism for it to work. It is voluntary.

Again, this is an area where we are making a beginning and it is a very complex area. I strongly suggest that the bill's provisions are very sound, and I stand with the provisions of the legislation before us.

Mr. President, I have no requests for time.

Mr. Hartke. Mr. President, let me say one thing in answer to what the Senator from New Jersey has talked about. Voluntary portability is probably going to attract nothing. I do not think anyone is going to join it voluntarily. So I think what we have here is the nearest thing to nothing, if not nothing at all. Here is a situation where an employer would put himself in a position of assuming a responsibility which under the law he would not have to. So there would not be any incentive. After all, it is the employee's money, but the bill would give the employer the right to determine it. If we are going to protect anybody against inflation, portability is a must.

I yield back my time.

Mr. Williams. Mr. President, I yield back my time.

The Presiding Officer. All time on the amendment having been yielded back, the question is on agreeing to the amendment of the Senator from Indiana (Mr. Hartke). (Putting the question.)

The amendment was rejected.

Mr. Taft. Mr. President, I call up my amendment No. 480 as modified by the provisions at the desk.

The Presiding Officer. The clerk will read the amendment, as modified.

The legislative clerk proceeded to read the amendment, as modified.

Mr. Taft. Mr. President, I ask unanimous consent that reading of the amendment, as modified, be dispensed with.

The Presiding Officer. Without objection, it is so ordered.

The amendment, as modified, is as follows:

On page 176, line 10, strike "5" and insert in lieu thereof "7".
On page 176, line 12, strike "5" and insert in lieu thereof "7".
On page 176, line 25, strike "5" and insert in lieu thereof "7".
On page 177, line 12, strike "5" and insert in lieu thereof "7".
On page 178, line 9, strike "5" and insert in lieu thereof "7".

Mr. Taft. Mr. President, this amendment can be very easily understood.

On page 175 of the amendment by the Senator from Wisconsin, now S. 4, the trustees of a pension plan are prohibited from engaging in certain transactions. There are exceptions from the prohibited transactions with a limitation on investments in securities of the employer, or employer-group, and lease and real property transactions of the employer or employer-group up to an amount of 5 percent of the assets of the pension trust.

When this matter was considered in the Committee on Labor and Public Welfare, the figure which was included in S. 4 was a 10-percent figure. The compromise that was struck with the Finance Committee was 5 percent.

Since that time I have had a chance to consider and discuss the 5-percent figure with quite a number of people. The effect of my amendment would be to change the figure from 5 percent back to 10 percent. I believe the 10-percent figure would provide an adequate safeguard against self-dealing. My amendment would also permit some pension trusts which have already invested in lease-back arrangements with the company, the opportunity of retaining such profitable investments.

Mr. Long. Mr. President, will the Senator yield?

Mr. Taft. I yield.

Mr. Long. Mr. President, I have been talking to some of my colleagues about this matter. I would feel that I would have to oppose a 10-percent amendment. I would be willing to suggest a compromise to the Senate and make it 7 percent.

Would the Senator be willing to compromise the figure to 7 percent? The committee was willing to go to 5 percent. They started out with zero. If the Senator would compromise it at 7 percent, I would like to support his amendment.

Mr. Taft. Mr. President, I appreciate the flexibility of the Senator. It is a Louisiana compromise of 7 percent—between 5 and 10—and I would suggest to the Senator that perhaps his 7 percent figure could go to 7.5 percent.

Mr. Long. I may say to the Senator that we are moving a long way from the Finance Committee bill's position. Our position was zero.

Mr. Taft. I would be glad to discuss that with the Senator. I think that the Finance Committee position is an unnecessary restriction on the powers of a trustee. They are already under fiduciary restrictions contained in S. 4. There are many companies which already have

holdings of sizable amounts in employer stock and reality. I think a 10 percent limitation is a proper limitation. I see no reason to go below that 10-percent figure.

At the same time, I want to move ahead. I understood the Senator was going to be agreeable to the 10-percent figure. I appreciate that he has had a chance to talk to some members involved in this matter.

Mr. LONG. Mr. President, will the Senator yield, on the time in opposition?

Mr. TAFT. I yield.

Mr. LONG. The Finance Committee's attitude was that we do not object to having people putting their profits in the corporation's stock in a profit-sharing plan. If the corporation does well, the stock would do well, but if it is a pension plan, we are talking about and the corporation should fall on hard times, the proposed beneficiaries might lose out completely under existing law because the company went broke, and not only was the company not able to continue the plan, but the pension plan would go broke along with it.

Mr. TAFT. I appreciate that, but the Senator is talking only about a 10-percent factor.

Mr. LONG. Ten percent of the pension fund would be lost.

Mr. TAFT. Without taking some risk, the pension is going to be subject to the serious problems of inflation which have been in effect in recent years, and there is a prospect that it will be a factor in the future. Further S. 4 would establish termination insurance to protect the pension trust. Also there is no guarantee on the absolute safety of outside investments.

Mr. LONG. Diversifying the risk is the idea of a pension plan. When people are looking to a corporation both to put money into a pension plan and to keep it solvent and also relying on that corporation for employment, it more or less amounts to putting all one's eggs in one basket, or moving in that direction, when the pension money is invested in corporation stock.

It would be better for the pension to have diversified investments rather than have the money invested in corporation stock. We understand some people have invested pension plan money in their stock.

I thought we could compromise and have a 7-percent figure. From the Finance Committee's position, that is 7 percent more than zero. From the point of view of the Labor Committee, it is a reduction from what the committee advocated; but the Finance Committee thought it should be zero.

Mr. TAFT. Perhaps I should not take the entire burden of this compromise. I wonder if the distinguished Senator from New Jersey or the distinguished Senator from New York would care to back the 10-percent figure. Since they were in the discussions, would they care to make their views known?

Mr. JAVITS. Mr. President, will the Senator yield?

Mr. TAFT. I yield.

Mr. JAVITS. We are sympathetic to the Senator. He is a member of our committee. We had a 10-percent figure, but we have already compromised on splitting the figure. The Finance Committee had nothing. We therefore compromised with them half way.

The Senator from Ohio is offering a proposition which, considering the Senator's view, is probably about the best that can be done. If the Senator wants a rollcall, in all honesty we are going to stand by our bill. So I hope very much the Senator can find a way to work it out.

Mr. TAFT. Mr. President, is the Senator from New Jersey willing to express an opinion as to whether he is of the same opinion?

Mr. WILLIAMS. Yes.

Mr. President, the figure to which the Labor Committee was committed was 10 percent. The figure of the Finance Committee was zero. We would require that plans holding in excess of that amount would have to divest themselves over a period of years down to the permitted amount.

The Finance Committee did not require a sell-off. We thought 5 percent on the whole question made sense.

The Senator from Louisiana is making it 7 percent. I think that we are getting a lot closer to the Labor Committee position than we otherwise would.

Mr. LONG. Mr. President, since we reached an agreement with the Labor Committee, we have looked into this matter to see to what extent this would affect people across the country. Very few corporations would be adversely affected, and even those who would be would not be required to sell off much of their stock, even at the 5-percent figure. And they would have 10 years to make that adjustment.

Mr. TAFT. Mr. President, I understand. However, this situation is not as simple as the Senator puts it. There are some specific instances with which I am familiar, especially with real estate investment that would be hurt by a 5-percent limit. They are good investments. However, they are subject to evaluation. There is a continuing evaluation by the Internal Revenue Department. Some of these investments are very good investments. Even if we enact the 10-percent figure on investments, we will call for a termination of some of those investments.

However, in view of the expression of opinion by the Labor Committee on the subject and the background as outlined by the distinguished chairman, I ask unanimous consent to modify my amendment from 10 to 7 percent.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Ohio? The Chair hears none, and it is so ordered. The amendment is so modified.

The question is on agreeing to the amendment, as modified, of the Senator from Ohio (putting the question).

The amendment was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment.

Mr. HUDDLESTON. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

On page 46, line 3, after "lesser," insert "the alternative limitation for proprietary employees described in paragraph (4),".

On page 46, line 4, strike out "(4)" and insert "(5)".

On page 48, line 22, strike out the closing quotation marks.

On page 48, between lines 22 and 23, insert the following:

"(5) Minimum deductible amount.—For purposes of this subsection, the minimum deductible amount for any employee is the lesser of—

"(A) $750, or

"(B) 100 percent of his earned income derived by him from the trade of business with respect to which the plan is established.".

Mr. HUDDLESTON. Mr. President, this amendment would permit a self-employed individual to contribute at least $750 per year to a qualified plan, regardless of his earned income.

Many self-employed individuals—athletes, entertainers, and others—never know in advance whether they will have a bad year or a good year. Under such circumstances, there is great potential for contributions and the administrative costs of determining at the end of the year whether or not there have been excess contributions to a master H.R. 10 plan can become prohibitive. Of course, the administrative cost of making this determination is particularly significant for plans which cover relatively low-income individuals since the administrative cost is substantial in relation to the amount left to fund pension benefits. In fact, because of this administrative cost, insurance companies and other such trustees of master plans have, on occasion, refused to establish a master plan for certain groups of individuals.

It is the purpose of my amendment to lower this obstacle to establishing master H.R. 10 plans for low-income self-employed individuals. It allows an individual to annually contribute the lesser of $750 or 100 percent of earned income. In other words, an individual can contribute up to $750 per year without having to worry about making an excess contribution, provided that that person has earned at least $750.

It seems to me that if an individual is contributing as little as $750 annually, we should do everything possible to keep administrative costs of the plan at a bare minimum. My amendment is directed toward that goal. Even under the individual retirement plan, which is a new plan, an individual can contribute up to $1,000 or 100 percent of earned income. The amendment I propose merely makes limitations on contributions to an H.R. 10 plan more like those under an individual retirement plan.

Mr. CURTIS. Mr. President, I think the amendment of the Senator from Kentucky has merit. I am perfectly willing to accept the amendment.

Mr. NELSON. Mr. President, we dealt with this question in the Finance Committee and adopted the principle contained in the amendment of the distinguished Senator from Kentucky, although in a different amount.

Our side has no objection to the amendment of the Senator from Kentucky.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Kentucky (putting the question).

The amendment was agreed to.

Mr. STEVENSON. Mr. President, I send an amendment to the desk and ask that it be stated.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

On page 168, line 25, change the period to a comma and insert the following immediately thereafter: "three of whom shall be persons receiving benefits from a private pension plan.".

Mr. STEVENSON. Mr. President, in order to advise and assist the Secretary of Labor in the performance of his duties under the Welfare and Pension Plan Disclosure Act of 1962, that act establishes a 13-

member Advisory Council. The act allocates 10 of the 13 seats to various groups interested in the administration of the act, including labor, management, the insurance industry, and the corporate trust field.

This bill expands the membership of the Council to 21 and provides for the representation of actuaries, accountants, and investment counselors, as well as the groups already represented under the 1962 act.

In short, everyone is guaranteed representation except the pensioners themselves. Throughout the 11-year history of the Advisory Council, the pensioners have been denied the opportunity to speak for themselves on issues which vitally affect their economic well-being; not one pensioner has ever been appointed to the Advisory Council.

This amendment gives pensioners the voice they want and need by allocating the remaining three seats on the Council to persons receiving benefits under a private pension plan.

I urge the adoption of this amendment and yield back the balance of my time.

Mr. President, I would hope that the managers of the bill might see the justice of the amendment and agree to accept it.

Mr. Javits. Will the Senator yield?

Mr. Stevenson. I yield to the Senator from New York.

Mr. Javits. Mr. President, it would make it very difficult as far as I am concerned for me to accept the amendment. The Senator provides that they should be pensioners themselves instead of representatives of those receiving benefits.

That is a very tough matter. We had the same experience in poverty.

If the Senator would revise his amendment so that it would provide that they should be representative of those receiving pensions, we would be happy to take it.

Mr. Stevenson. Mr. President, I have no objection.

I modify my amendment.

Mr. Javits. Mr. President, may I suggest that it would then read:

Three of whom shall be persons representing those receiving benefits . . .

Mr. Stevenson. That is satisfactory.

The Presiding Officer. The amendment is so modified.

The amendment, as modified, is as follows:

On page 168, line 25, change the period to a comma and insert the following immediately thereafter: "three of whom shall be persons representing those receiving benefits from a private pension plan."

The Presiding Officer. The question is on agreeing to the amendment of the Senator from Illinois as modified.

The amendment as modified was agreed to.

The Presiding Officer. The bill is open to further amendment.

Mr. Nelson. Mr. President, I send to the desk a technical amendment, correcting clerical errors in amendment 496, and ask for its immediate consideration.

The Presiding Officer. Without objection, the amendment will be printed in the Record.

The amendment reads as follows:

On page 1, beginning with line 3, strike out through line 5 on page 3, and insert in lieu thereof the following:

(b) Table of Contents.—

TITLE I—ADMINISTRATION

PART A—INTERNAL REVENUE SERVICE

Sec. 101. Establishment of office.
Sec. 102. Authorization of appropriations.

PART B—REGISTRATION

Sec. 151. Duties of plans.
Sec. 152. Duties of the Secretary of Health, Education, and Welfare.
Sec. 153. Effective date.
Sec. 154. Authorization of appropriations for Department of Labor.

TITLE II—PARTICIPATION; VESTING; FUNDING; CERTAIN BENEFITS

PART A—PARTICIPATION

Sec. 201. Minimum standards relating to participation.

PART B—VESTING

Sec. 221. Minimum standards relating to vesting.

PART C—FUNDING

Sec. 241. Minimum standards relating to funding.

PART D—OPTIONAL FORM OF BENEFIT; SPECIAL RULES

Sec. 261. Amendment of section 401.
Sec. 262. Prohibition against maintaining non-qualified plans.

PART E—PROTECTION OF PENSION RIGHTS UNDER GOVERNMENT PLANS AND CONTRACTS

PART D—OPTIONAL FORM OF BENEFITS; SPECIAL RULES

Sec. 281. Duties of the Secretary of the Treasury.
Sec. 282. Duties of the Secretary of Labor.

TITLE III—PORTABILITY

Sec. 301. Definitions.
Sec. 302. Program established.
Sec. 303. Establishment of fund.
Sec. 304. Registration.
Sec. 305. Acceptance of deposits.
Sec. 306. Individual accounts.
Sec. 307. Payments from individual accounts.
Sec. 308. Assistance to plan administrators.
Sec. 309. Amendment of Internal Revenue Code of 1954.
Sec. 310. Authorization of appropriations.

TITLE IV—PLAN TERMINATION INSURANCE

PART A—PENSION BENEFIT GUARANTY CORPORATION

Sec. 401. Definitions: Special rules.
Sec. 402. Pension Benefit Guaranty Corporation.
Sec. 403. Establishment of Pension Benefit Guaranty Fund.

PART B—COVERAGE

Sec. 421. Plans covered.
Sec. 422. Benefits covered.
Sec. 423. Contingent liability coverage.
Sec. 424. Other risks.

PART C—TERMINATIONS

Sec. 441. Termination by plan administrator.
Sec. 442. Termination by Pension Benefit Guaranty Corporation.
Sec. 443. Reportable events.
Sec. 444. Allocation of assets.
Sec. 445. Recapture of certain payments.
Sec. 446. Report by corporation.

PART D—LIABILITY

Sec. 461. Corporation liability.
Sec. 462. Liability of employer.
Sec. 463. Liability of substantial employer for withdrawal.
Sec. 464. Liability of employers on termination of multi-employer plan.
Sec. 465. Annual report of plan administrator.
Sec. 466. Annual notification to substantial employers.
Sec. 467. Recovery of employer liability for plan termination.

PART E—AMENDMENTS TO INTERNAL REVENUE CODE OF 1954; EFFECTIVE DATES

Sec. 481. Amendments to Internal Revenue Code of 1954.
Sec. 482. Effective dates.

PART F—ALLOCATION OF ASSETS WHERE SECTION 444 DOES NOT APPLY

Sec. 491. Allocation of assets for plan terminations not covered.

TITLE V—DISCLOSURE AND FIDUCIARY STANDARDS

PART A—DISCLOSURE

Sec. 501. Authority to issue regulations.
Sec. 502. Amendment to Welfare and Pension Plans Disclosure Act.
Sec. 503. Annual reports.
Sec. 504. Investigations.
Sec. 505. Public information.
Sec. 506. Establishment of Advisory Council.
Sec. 507. Administration.

PART B—FIDUCIARY STANDARDS

SUBPART I—FIDUCIARY STANDARDS UNDER THE WELFARE AND PENSION PLANS DISCLOSURE ACT

Sec. 511. Amendment to the Welfare and Pension Plans Disclosure Act.
Sec. 512. Effective dates.

SUBPART II—FIDUCIARY STANDARDS UNDER THE INTERNAL REVENUE CODE OF 1954

Sec. 521. Qualifications and responsibilities of individuals.
Sec. 522. Prohibited transactions.

TITLE VI—ENFORCEMENT

PART A—DISPUTES RELATING TO THE QUALIFICATION OF CERTAIN EMPLOYEE PLANS

Sec. 601. Tax Court procedure.
Sec. 602. Determination of pension rights.

PART B—AUDITING, ETC.

Sec. 641. Excise tax for auditing; etc.

Part C—Actuaries

Sec. 671. Enrollment and reports of actuaries.

Part D—Resolution of Disputes Generally

TITLE VII—RETIREMENT SAVINGS; LIMITATION ON PROPRIETARY EMPLOYEE CONTRIBUTIONS; TAXATION OF CERTAIN LUMP-SUM DISTRIBUTIONS

Sec. 701. Deduction for retirement savings.
Sec. 702. Certain plans.
Sec. 703. Taxation of certain lump-sum distributions.
Sec. 704. Contributions on behalf of self-employed individuals and proprietary employees.
Sec. 705. Collectively bargained plans.
Sec. 706. Miscellaneous provisions.

(c) Amendment of 1954 Code.—Except as otherwise expressly provided, whenever in this Act an amendment is expressed in terms of an amendment to a section or other provision, the reference is to a section or other provision of the Internal Revenue Code of 1954.

On page 7, line 10, after "thereof" insert a comma.

On page 9, line 6, strike out "501(g) (11) of this Act", and insert in lieu thereof the following: "3(15) of the Welfare and Pension Plans Disclosure Act".

On page 11, beginning with line 9, strike out through line 22 on page 12 and insert in lieu thereof the following:

Sec. 154. Authorization of Appropriations for Department of Labor.

On page 21, line 3 after "Act" insert "and".

On page 2, line 9, after the period insert "A plan described in this subparagraph meets the requirements of this paragraph.".

On page 30, lines 11 and 12, strike "section 501(g) (11) of the Retirement Income Security for Employees Act" and insert "section 3(15) of the Welfare and Pension Plans Disclosure Act".

One page 15, line 22, strike out "have been" and insert "were".

On page 15, line 24, before the comma insert "during the most recently concluded contract negotiations which were the subject of bargaining between such representatives and the employer or employers".

On page 66, line 18, after "persons" insert "engaged in a trade or business which is in or affects interstate commerce".

On page 66, line 19, strike "in commerce".

On page 68, line 18, strike "; and" and insert a period.

On page 68, strike lines 19 and 20.

On page 72, line 10, strike "section 412(c) (1)" and insert "section 412(b) (1)".

On page 72, line 12, strike "section 501(g) (11) of this Act" and insert "section 3(15) of the Welfare and Pension Plans Disclosure Act".

On page 83, line 22, strike "section 412(c) (1)" and insert "section 412(b) (1)".

On page 87, line 4, strike "section 412(c) (1)" and insert "section 412(b) (1)".

On page 105, lines 21 and 22, strike "section 412(c) (1)" and insert "section 412(b) (1)".

On page 96, line 4, after "any" insert "one".

On page 120, lines 4 and 5, strike "section 412(c) (1)" and insert "section 412(b) (1)".

On page 139, lines 6 and 7, strike out "section 501(g) (11) of the Retirement Income Security for Employees Act", and insert in lieu thereof the following: "section 3(15) of the Welfare and Pension Plans Disclosure Act".

On page 215, lines 5 and 6, strike out "section 501(g) (11) of the Retirement Income Security for Employees Act", and insert in lieu thereof the following: "section 3(15) of the Welfare and Pension Plans Disclosure Act".

On page 216, lines 18, 19, and 20, strike out "section 501(g) (11) of the Retirement Income Security for Employees Act", and insert in lieu thereof the following: "section 3(15) of the Welfare and Pension Plans Disclosure Act".

Beginning on page 11, line 9, strike through line 21 on page 12.

On page 64, line 20, insert before the period the following: "and that such election may be made only after such participant receives a written explanation

of the terms and conditions of such joint and survivor annuity and the effect of such election"

On page 142, insert between lines 11 and 12 the following:

AUTHORITY TO ISSUE REGULATIONS

SEC. 501. (a) The Secretary of Labor shall have authority to issue such rules and regulations as are necessary to implement the provisions of this Act and the Welfare and Pension Plans Disclosure Act.

(b) In order to avoid unnecessary expenses and duplication of functions among government agencies the Secretary may make such arrangements or agreements for cooperation or mutual assistance in the performance of his functions under this Act and the Welfare Plans Disclosure Act and the functions of any agency, Federal or State, as he may find to be practicable and consistent with law. The Secretary may utilize on a reimbursable or other basis the facilities or services of any department, agency, or establishment of the United States or any State including services of any of its employees with the lawful consent of such department, agency, or establishment; and each department, agency, or establishment of the United States is authorized and directed to cooperate with the Secretary and to the extent permitted by law to provide such information and facilities as the Secretary may request for his assistance in the performance of his functions under this Act.

On page 142, line 14, strike out "501" and insert in lieu thereof "502".

On page 149, strike lines 10 through 15 and insert in lieu thereof the following:

(i) Section 4(b)(4) of such Act is repealed.

On page 150, line 23, insert immediately before the quotation marks the following: "The Secretary shall prescribe by general rule simplified reports for plans which cover less than 100 participants and which maintain an employee benefit fund with less than $100,000 in assets, except that nothing contained herein shall preclude the Secretary from requiring any information or data from such plans where he finds such data or information necessary to carry out the purposes of this Act nor shall the Secretary be precluded from revoking provisions for simplified forms for any such plan if he finds it necessary to do so in order to carry out the objectives of this Act.".

On page 153, line 6, after the word "conducted" insert the words "subject to regulations of the Secretary and".

On page 165, line 12, add the following new sentence: "For the purposes of any investigation described in this subsection, the provisions of sections 9 and 10 (relating to the attendance of witnesses and the production of books, records, and documents,) of the Federal Trade Commission Act of September 16, 1914 (15 U.S.C. 49, 50), are hereby made applicable to the jurisdiction, powers, and duties of the Secretary or any officer designated by him. To the extent he considers appropriate the Secretary shall delegate his auditing and investigative functions under this section with respect to insured banks acting as fiduciaries of employee benefit plans to the 'appropriate Federal banking agency' as that term is defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813 (q))."

On page 165, insert between lines 15 and 16, "PUBLIC INFORMATION".

On page 170, insert between lines 18 and 19 the following:

ADMINISTRATION

SEC. 507. Section 5108 of title 5, United States Code, is amended by adding at the thereof the following new subsection:

"(f) In addition to the number of positions authorized by subsection (a), the Secretary of Labor is authorized, without regard to any other provision of this subsection to place a total of 20 positions in the Department of Labor in GS–16 and 17.".

On page 172, insert between lines 13 and 14, the following:

"(2) A fiduciary is prohibited from engaging in the following transactions:

"(A) holding or purchasing on behalf of the fund any security which has been issued by an employer or employer-group whose employees are participants in the plan, under which the fund was established or a corporation controlling, controlled by, or under common control with such employer, or employee-group, if such investment, which when added to such securities already held, exceeds

7 per centum of the fair market value of the assets of the fund. Notwithstanding the foregoing, such 7 per centum limitation shall not apply to profit sharing, stock bonus, thrift and savings or other similar plans which explicitly provide that some or all of the plan funds may be invested in securities of such employer or a corporation controlling, controlled by, or under common control with such employer, nor shall said plans be deemed to be limited by any diversification rule as to plan funds which may be invested in such securities. Profit sharing, stock bonus, thrift, or other similar plans, which are in existence on the date of enactment and which allow investment in such securities without explicit provision in the plan, shall remain exempt from the 7 per centum limitation until the expiration of one year from the date of enactment of this section. Nothing contained in this subparagraph shall be construed to relieve profit-sharing, stock bonus, thrift and savings or other similar plans from any other applicable requirements of this section. For the purposes of this subparagraph the leasing (or a purchase in connection with such lease) of real property and personal property related to such real property to an employer or employer-group by a plan shall be deemed to be a security of such employer or employer-group;

"(B) any fund other than a profit-sharing, stock bonus, thrift savings plan, etc., holding securities of an employer or employer group which employs participants in such plan, in excess of 7 percent of the fair market value of such fund on the effective date of this section shall, within 5 years after the effective date of this section, divest not less than 50 per centum of such excess and shall, not later than 10 years after the effective date of this section divest not less than 100 per centum of such excess.

On page 172, line 14, strike "(2)" and insert in lieu thereof "(3)".

On page 173, line 2, strike out the word "or".

On page 173, line 5, strike out the period and insert in lieu thereof "; or" and insert between lines 5 and 6 the following:

"(G) represent any other party with such fund or in any way act on behalf of a party adverse to the fund or adverse to the interests of its participants or beneficiaries.".

On page 173, line 6, strike "(3)" and insert in lieu thereof "(4)".

On page 173 line 10, strike "(2)" and insert in lieu thereof "(3)".

On page 173, line 18, add the following new sentence: "Prior to the granting of an exemption under this paragraph, the Secretaries shall give adequate notice which shall include publication in the Federal Register, to interested persons, of the pendency of such exemptions."

On page 173, line 19, strike "(2)" and insert in lieu thereof "(3)".

On page 174, strike lines 10 through 17.

On page 174, line 18, strike "(3)" and insert in lieu thereof "(2)".

On page 175, line 7, strike "(4)" and insert in lieu thereof "(3)".

Beginning on line 10, page 175, strike through line 15 on page 178.

On page 178, line 16, strike "(7)" and insert in lieu thereof "(4)"

On page 178, line 20, strike "(8)" and insert "(5)".

On page 178, line 23, strike "(2)" and insert in lieu thereof "(3)".

On page 178, line 24, strike "(9)" and insert "(6)".

On page 179, line 2, insert after the word "subsection" "(a) or".

On page 179, line 24, insert before the word "agreement" the words "by any".

On page 180, line 3, strike the words "unless specifically disapproved" and insert in lieu thereof "subject to regulations promulagted".

On page 180, insert between lines 7 and 8 the following:

"(h) no fiduciary shall permit any assets of the fund to be held, deposited, or invested outside the United States unless the indicia of ownership remain within the jurisdiction of a United States District Court, except as authorized by the Secretary by rules or regulations.

On page 184 beginning with line 8, strike through line 13 on page 186 and insert in lieu thereof "SEC. 521 FIDUCIARY STANDARDS.

On page 186, line 14, strike "(c)" and insert in lieu thereof "(a)".

On page 186, line 18, strike "the" and insert a period after the word "assistance" and strike the words "in the performance of the functions of the Secretary of the Treasury under this section.".

On page 186, beginning on line 26, strike through line 6 on page 188.

On page 188, line 7, strike "(3)" and insert in lieu thereof "(b) COOPERATION WITH REGARD TO INVESTIGATIONS.—".

On page 188, line 11, strike "(e)" and insert in lieu thereof "(c)".

On page 188, line 17, insert after the word "transactions" the words "under section 522(d)(1)".

On page 191, line 1, strike the word "fiduciary" and insert in lieu thereof the words "party in interest".

On page 191, line 2, strike the words "income or".

On page 191, line 5, strike the word "from" and insert the word "by".

On page 191, insert between lines 8 and 9, the following:

"(A) Exemption.—The Secretary, in conjunction with the Secretary of Labor shall by rule or regulation provide for the conditional or unconditional exemption of any fiduciary or class of fiduciaries or transactions or class of transactions from all or part of the restrictions imposed by paragraph (1) of this subsection. An exemption granted under this section shall not relieve a fiduciary from any other applicable provisions of this Act. In granting an exemption under this paragraph, the Secretaries shall assure that such exemption is (i) administratively feasible, (ii) in the interests of the fund, (iii) protective of the rights, both contingent and vested, of participants and beneficiaries of such plan. Prior to the granting of an exemption under this paragraph, the Secretaries shall give adequate notice to interested persons, which shall include publication in the Federal Register, of the pendency of such exemptions.

On page 191, line 9, strike "(A)" and insert in lieu thereof "(B)".

On age 191, line 17, strike "(B)" and insert in lieu thereof "(C)".

On page 192, strike lines 7 through 15.

On page 193, line 8, after the word "the" insert the words "purchase and".

On page 194, line 15, strike the words "It is not a" and lines 16 through 21.

On page 197, line 21, insert after "(A)," a "(B),".

On page 198, line 9, insert after "(A)," a "(B),".

On page 203 strike lines 13 through 18 and on line 19 strike "(3)" and insert "(2)".

On page 210, beginning with line 14, strike through line 8 on page 212.

On page 218, line 9, insert the word "ENFORCEMENT:" immediately before the word "RESOLUTION".

On page 218, line 11, insert the word "pension" before the word "benefit".

On page 219, between lines 21 and 22 insert the following:

"(g) The Secretary shall prescribe rules and regulations necessary to carry out this section.".

On page 219, line 25, after the word "Act" insert "and the Retirement Income Security for Employees Act".

On page 220, line 9, after the word "Act" insert "and the Retirement Income Security for Employees Act".

On page 220, line 16, after the word "Act" insert "and the Retirement Income Security for Employees Act".

On page 220 line 15, strike "15" and insert in line thereof "16".

On page 222 strike line 17 through line 20 and insert in lieu thereof:

Sec. 695 (a) The jurisdiction of any court competent to hear an action brought by a participant or beneficiary under sections 693 or 694 shall be conditioned upon the service of a copy of the complaint upon the Secretary by certified mail, who shall have the right in his discretion to intervene in the action.

On page 226, line 2, strike the word "registered" and insert in lieu thereof the word "certified".

Mr. Nelson. Mr. President, I yield back my time.

Mr. Javits. Mr. President, I yield back the time on our side.

The Presiding Officer. The question is on agreeing to the amendment of the Senator from Wisconsin (putting the question).

The amendment was agreed to.

The Presiding Officer. The bill is open to further amendment. If there be no further amendments to be proposed, the question is on the engrossment and third reading of the bill.

Mr. Hruska. Mr. President, the pending bill in its presently amended form provides long-needed progress in private pension plan reform. On balance, the improvements over the present law make it deserving of enactment.

The changes it contains are numerous, comprehensive, and intricate. They bring added benefits and coverage to many taxpayers, both those not covered now as well as those who are. They provide a large measure of equalizing treatment for different taxpayers, groups and classes. In addition to the increased coverage, many additional advantages and protections to the beneficiaries and their survivors are being provided.

While these changes are many, there is one in particular that I want to point out. It relates to provisions adding beneficial coverage for the millions of taxpayers who are not covered by any pension plan under the present law, and who would not otherwise be covered under the law as they would be following enactment of this bill. This aspect has been of special and persistent concern to my colleague from Nebraska, Senator Curtis. He has urged action upon it through many Congresses, so it is gratifying that his loyalty and dedication to this idea are now being rewarded.

The problem comes about in this way: In spite of the rapid growth in pension plan coverage, only about one-half of all employees in private, nonagricultural employment in America are still without consideration or coverage. This is due to a number of reasons. Small business firms and agriculture rarely have pension plans now. Requirements for establishing plans and participating in them are often overly exacting. Age and duration of employment service requirements are often unrealistically limiting and restrictive. All of this has had a tendency to exclude many employees and individuals from advantages of a tax-benefit advantaged retirement fund for their later years.

The bill before us recognizes the need to grant to such individuals some of the tax advantages enjoyed by those who are covered by pension plans. It does so by providing a limited tax deduction—up to $1,500 per year—for such payments as they may make to a properly qualified retirement savings plan.

Such a plan could be one of a variety of plans. Some examples are: Annuity contracts sold by insurance companies, mutual funds, corporate securities, savings accounts, and special government retirement bonds which would be issued for this purpose. A choice of one of these methods would be at the option of the taxpayer. Contributions or payments to that end would not be taxable if they did not exceed the specified limit.

This arrangement is equitable. Heretofore that taxpayer has been called upon to pay income taxes first, before he could devote a portion of his earnings to retirement savings from the remainder of his paycheck; that is, from his paycheck after taxes.

It has been this inequity to which my Nebraska colleague has long addressed his energies and attention. He has fought repeatedly for some form or method whereby the 50 percent of the population not covered by pension plans would also receive some tax-relief advantage in the building up of a retirement base; an equivalent of the tax-relief consideration received by those taxpayers who are covered by pension plans. He had pursued this in his long years of service on the Ways and Means Committee of the other body where he had served for 16 years. He resumed the efforts in his long years of service on the Finance

Committee. It should be recalled that his efforts on behalf of the Keogh plan H.R. 10, when it was being formulated and enacted for self-employed people, had as its basis the idea that similar tax relief grant should be extended beyond only those under pension plans. But of course as fine as H.R. 10 was, it did not go far enough, so Senator Curtis persisted in his battle whenever occasion afforded. The pending bill contains provisions which see the happy and satisfactory conclusion to those efforts.

Of course there are many others in the Congress who are of similar mind, and the approval of the bill will bear this out; full credit should go to each. But the fact remains that the pioneering, early efforts and sustained force of my colleague from Congress to Congress to the present time were heavy factors for final achievement. His firm purpose, pursuit, and dedication have borne fruit.

It for these reasons I note the event and express this salute.

But the entire bill is comprehensive in scope and detail. It required and received the wisdom, experience and energies of many Members to produce and process it. Commendations are due to each of them, and especially those serving on pertinent committees and their respective staffs, all of whom contributed much.

President Nixon in his message to the Congress on this subject of pension plan reform last April stated:

> The achievements of our private welfare and retirement plans have contributed much to the economic security of the Nation's workers. They are a tribute to the co-operation and activity of American labor and management. We can be proud of the system that provides them—but we must also be alert to the Government's responsibility for fostering conditions which will permit that system's further development.

Mr. President, I submit that the Congress will have shown well that alertness and discharged its responsibility to which President Nixon alluded in his message, upon approving, perfecting, and enacting the "Retirement Income Security for Employees Act."

FAIRNESS TO SMALL BUSINESS IN THE PENSION BILL

Mr. McIntyre. Mr. President, the pension bills the Senate considers today (S. 4 and S. 1179) will result in very important legislation.

Retirement security, which is important to every workingman and his family, has increased in importance in proportion to longer life expectancy.

From the business side, deferred compensation is a significant management instrument. It enables companies to attract and retain key personnel, and their loyalties, so that an organization can be built and a higher quality job can be done for the ultimate consumer—whether this user is a Federal, State, or city government, a business or an individual buyer.

This far-ranging law with its economic and tax aspects thus deeply affects the terms of the social compact in our country between capital, management, labor, and the consumer.

Another aspect of these bills, which could easily escape notice, is their impact over 9 million individual businessmen, 900,000 partner-

ships, and the small stockholders of 1.7 million corporations. Small business constitutes 97½ percent of the total number of businesses in the United States and accounts for over half the employment and around 40 percent of the gross national product. They are the wellspring of enterprise, risk-taking and innovation in this country.

Accordingly, I wish to commend the Committees on Finance, Labor, and the Joint Committee on Internal Revenue Taxation, as well as the individual Senators who have worked so hard on this bill and their recognition of the needs of small business enterprise.

S. 1179 proposes to raise the limitations on deductions for self-employed persons, such as individual proprietors, to a maximum of $7,500 or 50 percent of income—from $2,500 or 10 percent. This is a much more realistic level, particularly in view of inflation. It will allow many more smaller firms to consider establishing pension plans. In turn, this should open up wider opportunities to financial institutions and consultants to develop this profitable business among a much larger clientele.

In the initial stages, the question also arose about the extent to which similar limits should apply to corporations. Many Senators and staff members had a part in the difficult work of trying to arrive at a fair resolution of this issue. The Select Committee on Small Business, on which I serve, under the leadership of the Senator from Nevada (Mr. Bible) played a role by collecting data on the effect which certain of the proposals would have on the existing plans of typical smaller corporations such as machine shops, general contractors and printers. This was made available to the Committees on Finance and Labor which bear the heavy responsibilities of presenting the bills which they believe will assure equitable treatment to all.

As a result of the work that was done and the conscientious consideration which was given these questions, particularly at an additional executive session of the Committee on Finance on September 14, I believe that most of the wrinkles have been worked out of the present legislation.

However, certain members of the committee feel that the permissible level of annual benefits could be better adjusted. The Senator from Wisconsin (Mr. Nelson) who held the public hearings on S. 1179 has such an amendment which I plan to support.

There also remains a concern over whether the equivalency formula will provide true equality of consideration for profit sharing, money purchase, and other plans, as well as insurance plans. The memorandum points out that:

> Many businesses typically take several years to achieve the financial stability required to undertake a commitment to a fixed cost plan and thus probably enter the retirement-deferred-compensation field with a profit-sharing plan as to which contributions are voluntary from year to year. It would therefore seem that any rules in this area be uniform as between the various types of retirement plans.

I believe we should make our congressional intention very clear, that no discrimination is intended against any sort of deferred compensation plan, and especially the plans which are most amenable to adoption by newer and smaller businesses.

We hope there is sufficient flexibility under the statute and the regulations so that the necessary adjustments can be made in behalf of unique small business problems such as integration with social security and the wide variations in earnings year to year which characterize many newer and smaller firms.

NONDISCRIMINATION

Mr. MONDALE. Mr. President, for some months I have been deeply concerned with the need to insure that pension benefits are made available on a nondiscriminatory basis to all those who have earned them regardless of race, color, national origin, religion, or sex.

The chance to achieve economic security—based on merit—is the heart of the American dream; and where pension benefits are unfairly reduced or denied, the results are tragic for those who have earned a dignified retirement.

I had intended at this time to raise my amendment incorporating nondiscrimination based on race, color, national origin, religion, or sex into the basic requirements of the pending bill.

However, I understand that the distinguished Senator from New Jersey (Mr. Williams) is concerned that this approach runs counter to our actions last year in further consolidating equal employment jurisdiction in the Equal Employment Opportunity Commission.

Mr. WILLIAMS. The Senator is correct. Although I fully share your concern for full enforcement of nondiscrimination requirements affecting pension and profit-sharing plans, I believe that the thrust toward centralized administration of nondiscrimination in employment must be maintained. And I believe this can be done by the Equal Employment Opportunity Commission under terms of existing law.

Mr. MONDALE. Does the Senator agree that discrimination based on race, color, national origin, religion, or sex affecting participation in pension or profit-sharing plans, is presently prohibited under section 703(a) of the Equal Employment Opportunity Act? That section provides, in part:

> It shall be an unlawful employment practice for an employer—
>
> (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religions, sex, or national origin—

Mr. WILLIAMS. I agree with the Senator's reading of the statute and I understand that the courts are following this view. The leading cases are: *Rosen* v. *Public Service Commission*, 477 F. 2d 90 (3 Cir. 1973); *Bartmess* v. *Drewrys*, 444; 1186 (7th Cir. 1971) Cert. Denied 404 U.S. 939; *Fillinger* v. *East Ohio Gas*, 4 FEP 73 (E.D. Ohio 1971).

Again, I share the concerns of the distinguished Senator from Minnesota that the EEOC must view discrimination in pension plans as among the most serious forms of employment discrimination. And I will be glad to join the Senator from Minnesota in impressing this view on the new chairman-designate of the Commission, Mr. Powell, when he appears before the Committee on Labor and Public Welfare for confirmation.

Mr. MONDALE. Mr. President, the distinguished Senator from New Jersey, the chairman of the Committee on Labor and Public Welfare and of the Labor Subcommittee, is the principal architect of the Equal Employment Opportunity Act and of the pending bill. I deeply appreciate his judgment and his assistance.

In light of the Senator's views, and with the understanding that nondiscrimination in pension and profit-sharing plans is fully required under the Equal Employment Opportunity Act, I will not propose my amendment at this time.

Mr. HANSEN. Mr. President, the Senate has been considering a very important piece of pension reform legislation which will have far-reaching effects on every employed person in this country. The Senate Committee on Labor and Public Welfare and the Senate Finance Committee have actively coordinated their efforts in order to produce this timely piece of legislation. I would like to take this opportunity to commend the chairmen of these two committees for the degree of cooperation they have achieved.

I certainly agree that minimal standards are necessary in this area of private pension plans in order to insure employee security upon retirement. However, a few aspects of this bill still concern me because I think we might have gone a little too far for this first effort. I only hope that we have not created an administrative monster which could be counterproductive to our goal of encouraging the establishment of private pension plans.

I am primarily concerned about the type of termination insurance that has been adopted. A joint study by the Treasury Department and the Department of Labor indicates that very few employees are affected by plan terminations. In fact, this Treasury study showed that in a 7-month-period of 1972, only .04 of 1 percent of all pension plan participants suffered any losses—both vested and unvested. I am certainly concerned about employees who lose their rights to pension benefits after working many years for one company. I am not trying to minimize the tragedy or extent of their losses. However, the present legislation is calling for a massive and far-reaching program to help eliminate the losses of these few individuals. We have taken important steps in the pending legislation to insure adequate funding and early vesting. These two measures alone should help to substantially minimize any losses incurred by employees whose plans are terminated. Would not it be better to wait and see how effective these funding and vesting requirements are in eliminating termination losses before establishing a totally new bureaucracy which could dramatically increase government control of private pension plans?

The administration's pension reform proposal (S. 1631) of which I was a cosponsor, more closely represented the pension reform I thought was necessary at this point in time. It would have set minimum standards without stifling the growth of present plans or the establishment of new ones.

I would particularly like to mention one section of S. 1631, incorporated into the Finance Committee legislation, which will permit individuals not covered by qualified private pension plans to make tax deductible contributions of up to $1,500 per year for their own retirement. Employers who do not have established pension plans for

their employees are also encouraged to contribute to these personal savings plans so long as the combined contribution does not exceed the $1,500 limitation. The employer is allowed a tax deduction for his share of the contribution.

This provision gives an employee not covered by another type of pension plan, the opportunity to put some of his money away for his own retirement and, at the same time, to receive some of the same tax benefits for doing so which are available to members of qualified pension plans. The people for whom this provision is intended are the ones presently discriminated against under the present tax law. They are taxed on income they put away for retirement as well as the interest on that income. This provision will eliminate the present disadvantage and encourage more people to save for their own retirement. Planning ahead for later years is essential, and this section of the bill certainly encourages an individual to do just that.

Other sections of this legislation dealing with vesting, funding, and fiduciary responsibilities have been carefully structured and should be of real benefit to all employee participants in qualified private pension plans. Although I do have some reservations about this legislation, I hope that the provisions adopted will encourage the establishment of additional private pension plans and will not unnecessarily restrict their growth. The number of private plans has been increasing rapidly, and employees contributing to these plans deserve some degree of security regarding their future benefits.

SURVIVORSHIP BENEFITS

Mr. MONDALE. Mr. President, I wish to congratulate the managers of the pending bill—Mr. Williams, Mr. Javits, Mr. Nelson, Mr. Long, Mr. Bentsen, and Mr. Bennett—for incorporating within the terms of the compromise proposal the essence of my amendment—adopted by the Committee on Finance—and the essence of the amendment of the Senator from New York (Mr. Javits)—adopted by the Committee on Labor and Public Welfare—regarding survivorship benefits to the spouses of pension plan participants.

Information about the extent and magnitude of survivorship benefits under existing pension plans is woefully inadequate. But we know that many plans do not provide any benefits to the surviving spouse of a deceased participant. This means that the death of a participant totally deprives a spouse of all pension support. Yet many pension participants strongly believe that they are building for the future security of their families.

Under section 221 of the compromise amendment, pension plans subject to the jurisdiction of this Act must provide continuing benefits to the surviving spouse unless a specific, written election is made rejecting these continuing benefits within 2 years of retirement. These survivorship benefits are to be an actuarial reduction of the primary benefit which the plan participant would receive during his lifetime—and in no case is this benefit to be less than half the primary benefit which the participant would receive during his lifetime.

This action is crucially important. Although half our working force is covered by pension and profitsharing plans, fewer than 2 percent of

elderly widows receive any benefits at all. The Treasury Department estimates that 88 percent of the 23 million participants in fixed-pension benefit plans will have a dependent spouse as they approach retirement age. Section 221 of the compromise bill will go a long way toward assuring financial security and a dignified retirement for these persons.

Mr. KENNEDY. Mr. President, I rise to speak in support of the bill now before the Senate which seeks to establish fundamental reforms in the private pension system that now encompasses more than 30 million Americans.

Despite the sharp rise in pension plan participants from the 4 million covered in 1940, the 30 million participants now enrolled unfortunately still cannot look to their retirement with a sense of confidence or assurance.

Too often, we have seen the guarantees they thought were contained in their pension plan disappear with the closing of a plant and the discovery that the plan did not have enough funds to provide anyone the pension he or she had expected.

I was pleased to join with Senators Williams and Javits—who have led the fight to reform the pension system—in cosponsoring S. 4, the Pension Reform Act, last session and again this year. Building on the record of the Senate Labor Subcommittee's extensive inquiry into the private pension system during the 92d Congress, S. 4 was a fundamental attempt to address the evils of the system. At the same time, the excellent work done by Senator Bentsen, Senator Nelson, and the Senate Finance Committee has now been molded into the legislation before us to produce a major step forward in pension reform.

These steps cannot be put off any longer. Too many men and women who worked in the factories and businesses of this Nation throughout their adult lives have found old age tarnished by the sudden discovery that they had no pension for retirement or a totally inadequate pension.

The witnesses testifying both before the Senate Labor Subcommittee and before the Senate Finance Committee brought unending tales of tragedy. For most of them, the time already had passed when their grievances could be redressed. But for millions of other Americans what we do this afternoon in passing this legislation may mean the difference between living in dignity and living in poverty.

The classic example remains that of Studebaker where 9,000 workers whose average age was 55 were declared surplus in December 1963 when the plant shut its doors. For those workers, the pension fund was their one remaining hope after absorbing the shocking news of Studebaker's demise.

But within a few days, it was apparent that the pension fund had been short changed. The result was that all workers under 40 received nothing. For these workers, the pension plan that they had been paying into throughout their working life turned out to be an illusion.

Mr. President, I ask unanimous consent that some of these cases collected by the UAW be printed in the Record at this time.

The PRESIDING OFFICER. Without objection, it is so ordered.

Thirty-Two Year Service Pension Reduced to $37.75

Mike Daly and Ed Daniel know well the fear of losing pension rights for which they have worked all their lives.

Both are victims of the pension plan termination at Gar Wood Division of Sargent Industries Inc. in Wayne, Mich.—Daly a retiree whose pension benefits were cut to a pittance, and Daniel, one of the firm's few remaining active workers, who will have no pension check at all to show for his 30 years on the job.

Daly, 71, chairman of the UAW Local 250 Retirees Chapter, remembers vividly the scene at a meeting in 1972 when the Gar Wood retirees were told that the firm was moving virtually all of its operations to other locations and was halting the pension plan.

"I saw heartbreak and fear in the people's eyes, and many broke down and were unable to speak," says Daly. "There were wives of retirees who came to voice their husband's despair, many who had never spoken in public before.

"Their lips moved and made no sound," he recalls. "The world dropped from under them.

"Where do they go? To the scrap heap? On welfare? To a mental institution? Sponge from relatives?"

Gar Wood's 231 retired workers suffered 60 percent cuts in their pension payments. For Daly, who worked at Gar Wood for 32½ years as an arc welder, this meant that "my pension was reduced from $93 a month to $37.75.

"Our life insurance was cut from $1,000 to $403 in death benefits," he added. "Our hospital insurance will be discontinued Dec. 1."

At age 57, Daniel worries about the future, asking, "Who is going to hire me, even though I can do good work?"

An arc welder in the skeleton work force of about 40 remaining at Gar Wood, Daniel points out that some 500 Gar Wood active workers, like himself, had worked long enough to earn vested pension rights.

"They all thought that at the end of their working days—at age 60 or 62 or 65—that the money was there. Today they have no hope," Daniel says.

Gar Wood terminated the pension plan on July 31, 1972 and Daniel recalls that some of the retirees "didn't know anything about it until they got a check."

That check reflected the 60% pension cut.

"We pleaded with the company," says Daniel, president of Local 250. "We tried to get them to stay. But they wouldn't listen; they moved anyway.

"I think it's a shame when the old people by the thousands across this country, who have worked to build a great country, today have no pension—and our government will let this happen," he said. "If the congressmen and the senators of the United States could have been at Gar Wood and seen the faces of those people when they were told that no longer did they have pensions, I'm sure we would have better legislation than we have today. We'd have had something to protect these people."

Daniel is bitter about the contradictions in government policy and programs that, on one hand, allow firms to get tax breaks for putting workers' money into pension plans and, on the other, to terminate retirement plans at the expense of workers.

"I got not a dime after investing approximately 39 cents an hour into what I thought would be my pension," Daniel says. "We were never able to get Gar Wood to contribute one dime to our plan, not even one nickel.

"But under our governmental system, they got credit for putting the money into the plan: they got a tax rebate on it—out of our own money."

Daly points out that Gar Wood is "part of one of the new conglomerates that thrive on liquidation of small companies, with huge tax write-offs.

"These tax write-offs are made possible by act of Congress," he notes, adding: "I say to the members of Congress that it is time you gave protection to the people whose lives are destroyed by these write-offs."

Daly and Daniel agree emphatically that "pensions should be guaranteed the same as bank deposits."

Gar Wood Division: Sargent Industries—Pension Slashed by 60 Percent

Gar Wood is one of the oldest and best-known names in the manufacture of refuse truck bodies in the entire nation.

Located in the city of Wayne, a west side Detroit suburb, the Gar Wood plant employed somewhere near 500 workers for the better part of three decades.

In 1969, Sargent Industries, a giant American conglomerate, purchased Gar Wood outright. As in many instances when corporate interests switch hands, workers at Gar Wood wondered how the change would affect them. It didn't take long to find out.

In January 1972 UAW was notified by Sargent that the Wayne plant would be closed. Since operations were to be phased out, contributions to the pension fund would, of course continue—at least until the work force dipped to under 100. Then, the corporation could—and did—terminate the plan.

The plant was never really large but it had an old workforce and most had long service. As a result, pension benefits were smaller than workers received at nearby Big Three auto plants. But if benefits were small before the plan was terminated, they became anemic after the ax fell.

Those who had the right combination of years of service and age were allowed to apply for benefits amounting to only 40% of what the plan had originally called for. Those already retired had their pensions slashed by 60%.

Workers with a third of a century on the job, but still too young to retire under the plan, received nothing. The entire fund had been used up in the purchase of annuities for those already retired or eligible to retire.

The tragedy of Gar Wood workers is another sickening example of long-term corporate promises which have not been kept. The pension plan, financed with capital which workers could have otherwise had included in paychecks, is gone.

Dorsey Day: After 32 Years, an Uncertain Future

Dorsey Day was barely old enough to vote when he first went to work as a clerk in Kensington Steel's pattern department in 1941. He grew up with the fledgling casting company, and knew just about everybody who ever worked there.

He was always a cautious man, and considered the security of his family in almost everything he did. It was more than ten years after he went to work at Kensington before Day and his wife began a family. With his family's security in mind, he became a key person in the organizing drive that gave birth to UAW Local 162.

He was likewise concerned about the security and well-being of his coworkers, and in recognition of this they elected him local president 12 years ago and have returned him to office in each succeeding election

Classified now as an inspector, Day was floored when he was notified that Portec, a conglomerate which acquired Kensington about five years ago, had decided to discontinue operations and close the plant.

Now 51 and supporting two children who are away at college in addition to a 6-year-old daughter and his wife, Day is representative of what has happened to the average worker at the plant.

The typical Portec worker has 25 years of seniority and is 44 years old, which means that most were teenagers when they were first employed. Even if they are fortunate enough to land new jobs, their future is blurry.

The pensions they once thought they were building are gone, and they must now start from scratch. That is, if it is possible.

Thirty Years of Pension Credits Down the Drain

When Vivienne Hampson went to work for Macoid Industries in Detroit during the booming war production period of 1942, little did she know what the job eventually would cost her.

The cost: 27 years of loyal service that led to 27 empty years for her retirement and pension hopes.

The tragic loss of her pension rights occurred when Macoid closed its doors in June 1969 and moved to Pennsylvania. A leader in Macoid's fabricating department, Mrs. Hampson, who is a widow, was stunned to learn that the pension plan was being terminated and her "vested rights" were worthless.

The average age of Macoid's workers was 44. Mrs. Hampson was 54 when the firm moved.

"We had 200 employes covered by what we thought was an adequate pension plan," she recalls. Of the 200, 30 were retired. And after allocating the money in the pension plan to those who were retired, there was nothing left for Mrs. Hampson and her coworkers.

A month after Macoid closed, the sprightly, determined Mrs. Hampson hired on with Procon Pump in Detroit, "and in 1971 that one moved to Franklin, Tenn.

"So I was then 57 years of age, and another three years down the line," she said. In March 1972, she began working as a welder at the Walway Corp.

To Mrs. Hampson "adequate protection will have to come through Congress" on guaranteeing that workers get the pension benefits they work for, expect and are entitled to.

Pointing to the immensity of the problem, Mrs. Hampson says that amalgamated UAW Local 985, which she has served as financial secretary since 1952, "lost 75 plants through closings and relocation from 1952 to 1972."

She told congressmen at a pension reform hearing in Detroit that "the lyrics of the tune have always been the same."

"The song is "Promises, Promises," she explained.

"We are tired of promises from all of you," she told the congressmen. "When you reach that age—54, 57, 58—you cannot get Medicare, and it becomes a toss-up then on whether you will eat or buy your hospitalization insurance. And with semi-private hospital rooms at $77 a day, gentlemen, let me assure you that the cost of individual hospitalization is terrific."

Too Young for Pension Benefits

WHEN STILL ANOTHER CONGLOMERATE BOUGHT, THEN CLOSED A PLANT

For over half the 19 years Guadalupe Luna worked at a Los Angeles fixture manufacturing plant, he was building up the pension he and his wife, Mary, "knew" they'd get when he retired.

They'll never receive it. His pension went down the drain in 1970. That was when the conglomerate that had taken over the firm terminated the plan and shut down the plant.

"I was out of everything," Luna recalls. "No job. No health insurance; that stopped after 30 days. Nothing else. And I was too young for retirement benefits, even though I had over 10 years of credited service."

"It was like getting hit by a truck. You look on building up pension credits as a sort of payroll deduction. It's something you believe you'll have coming when you retire and need it. Then somebody decides no more plan, no more plant, and you're left with nothing."

Of the one-time peak employment of over 1,000 workers at the plant, Weber Showcase and Fixture Co., some 60 already had retired and were drawing benefits when the "parent" firm, Walter Kidde and Co., decided to shut it permanently.

Another 40 or so workers were added to the retirement list. But that was all. And Luna isn't among them. He was No. 60 on a final seniority list of about 260 workers, some with seniority dating back to 1940.

Luna had gone to work at Weber in 1951 as a punch press operator and later a structural assembler. As unit chairman of UAW Local 509, a post he held for some 10 years he helped negotiate the pension program which went into effect at Weber in 1960. He was a quality control inspector when the plant was closed ten years later.

Luna was fortunate. After being out of work for three months, he obtained a job at a small battery assembly plant about 30 miles from his home. But his new employer doesn't provide a retirement plan. Instead, there's only a profit-sharing program for long-time workers.

"But many of the others who lost everything at Weber still don't have work and are on welfare," he reported.

"For better than 90% of those thousand people and more who worked at Weber when it was at its peak, it looks that pension plan just ceased to exist."

Three Jobs, 36 Years and No Pension

It was July of 1964, and in another two months Leo Brocki would have attained vested rights to a pension with North American Rockwell in Los Angeles.

But Brocki abruptly was laid off from his job as a senior model builder. His pension hopes were dashed and Brocki's first priority quickly turned into the search for immediate employment to meet his family's needs.

Now, after more than 30 years of work in the aerospace industry, the 58-year old Brocki still is without a secured right to a private pension.

"Even the smallest pension would mean a great deal to me as I only have a few years to work," he says. "I know several persons who are going to receive nothing but Social Security after 30 years of service. I ask you, is this living?"

Brocki, who lives in Buena Park, Calif. with his wife, Anna, 52, began his aerospace career back in 1937 on the East Coast. He hired in as a trainee with the Glenn L. Martin Co. at Baltimore, Md., advancing to positions as a supervisor, planner and toolmaker. With massive drops in employment taking place at Martin in the 50s, Brocki took his wife and three sons to California where he began working as a model builder for North American Aviation in Los Angeles in 1954.

Less than 10 years later, hit by layoff, he hired in as a display model builder at the Douglas aircraft plant of McDonnell Douglas in Long Beach. This job lasted eight years until, in March of 1972, he was laid off because of a lack of work.

Since then, Brocki has found sporadic work again at North American Rockwell. For two months, he did antenna mock-ups on the B–1 Air Force bomber project until he was laid off. He was rehired for a month and a half, was laid off again, and was rehired once more in January of this year as a B–1 structures mechanic. Brocki is a member of UAW Local 887.

"We helped our country and industry to forge ahead while we were able," Brocki has told a congressman in a letter explaining his plight.

"Now let industry and our government help us when we need it, and not with welfare," he says.

No Pension After Nearly 35 Years of Work

Various Moorman, 17 years old when he went to work at National Tool in 1939, is now 52, suffering from asthma but otherwise in good health. A member of Local 408, he's been a shipping and receiving leader at the plant.

With nearly 35 years of seniority, how much will he receive in pension benefits now that Lear-Siegler has swallowed National Tool Salvage?

Not one cent.

Someone suggests he'll draw Social Security, won't he?

Of course he will—starting ten years from now. That's a long time away.

Maybe he'll be lucky in landing another job even though he's 52. He hasn't given up, not by a long shot.

But he had expected to receive some pension benefits, supposedly his, after putting in so many years at National Tool. You can feel the bitter pain in his gut when he says:

"Thirty-five years is a long time to build up for nothing."

Joe Mansor

$34.65 monthly pension after 32 years on job

Joe Mansor was a teenager in 1929 when he took a job at an Electric Autolite (Eltra) plant in Toledo.

For many years, Mansor would take a pencil and scrap of paper and compute his eventual pension entitlement by multiplying the base benefit by his total years of service.

It looked pretty good. After all, when a person spends his whole life with the same employer, the pension just has to be good. Right?

Wrong.

Eltra's Champlain Ave. plant in Toledo—with little advance warning—closed its doors and ended production in 1962. Twenty-five hundred Eltra workers were thrown out of work.

Since the pension plan was not sufficiently funded to provide full benefits to all employees, Mansor was entitled to only a fraction of what he thought he had earned.

So, after 32 years on the job, Mansor's total Eltra pension amounted to only $34.65 a month.

At the time of Eltra's closure, Mansor was only 50, which meant that he had to look for work until he became old enough to retire.

Unlike hundreds of less fortunate Eltra workers, Mansor landed another job, at the American Motors "Jeep" plant, also in Toledo, where he stayed until his recent retirement. His total pension from both jobs: $100 a month—with more than two-thirds of that coming from his relatively short-term job with American Motors.

If Mansor had been insured against loss of pension through federal legislation he would now be receiving a retirement benefit of about $400 a month.

No Pension After 44 Years

Every time Walter Baldridge gets into his car, he is reminded of how 44 years of work have led to a day-by-day existence where there's rarely enough money to meet the needs.

The car is a 14-year-old Studebaker station wagon, made by the company that employed Baldridge from 1926 to 1970. It also is the firm that terminated its pension plan in 1964, when Studebaker stopped producing autos, leaving Baldridge without any hopes for a private retirement income.

Baldridge's next-door neighbors in South Bend, Ind., are retirees, too, but they had been employed by companies which are still flourishing. One drives a new Oldsmobile and winters in Florida on a retirement income of more than $600 a month from Social Security and the UAW Bendix pension plan. The other has a similar pension income from Uniroyal.

"They bug me when they ask me how long I am going to drive the old '59 Studebaker wagon," says Baldridge, a former Studebaker plant guard, "and I tell them until I have enough money to buy a new one.

"And I know I can't do that," he adds. "How would I ever pay for it?"

Baldridge notes that, "Both of those guys had less seniority in their plants than I had in mine. The difference is that their employers are still operating the plants they retired from."

Life today for the 68-year-old Baldridge and his wife, Berneice 64, means sacrifices. Their combined income from Social Security is a meager $331 a month.

"It's for sure that we can't go out to eat, or if we do it's for hot dogs or hamburgers—and we can't go to the movies hardly at all unless we go to the matinees when the prices are reduced," he says. "We just couldn't afford to pay the full price."

Baldridge was six months short of the 60-year age requirement set for a pension entitlement when Studebaker quit making autos and suspended the pension plan.

He received only a lump-sum settlement. But even though this was a long-term gain, the U.S. government taxed it as regular, annual income and Baldridge received little more than $500.

He stayed as a Studebaker employee, working in the parts department until he retired in 1970. Then, the only income was a $40 weekly compensation for unemployment, and a $90 monthly Social Security check.

Baldridge and his wife began withdrawing their bank savings to exist. Mrs. Baldridge, four years younger than he, was not then eligible for Social Security payments which would have helped alleviate the financial crisis.

"The bank savings were a one-way street," he says. "When everything comes out and nothing goes in, they don't last long." Mrs. Baldridge also was hospitalized and there was no health insurance to cover the costs. Later, the couple obtained Blue Cross insurance, but this cost a whopping $32 a month from their income.

Baldridge supplements his income by working as a handyman carpenter. Sometimes he finds work with Indiana University, remodeling old houses for use as offices on the South Bend campus. He also repairs old cars and is glad to get extra work around the UAW Local 5 union hall on election days and other special events.

His experiences had led Baldridge to believe that "fully protected pensions are the best insurance anyone can have. The main thing is being protected."

Mr. KENNEDY. Mr. President, Studebaker is the classic case. But it is far from the only case. At Studebaker, it was Walter Baldridge, who had worked at the plant for 44 years and was just a few months shy of retirement. He received a lump settlement of slightly more than $500. When he retired, there was only social security.

At the Eltra Corp., in Toledo, Ohio, it was Joe Monsor who had worked at the plant for 32 years. When it folded, he found out that the pension plan was not sufficiently funded. So instead of an expected $400 a month, he wound up with $34.65 a month.

In my own State of Massachusetts, the history of the past decade has demonstrated the need for far-reaching reforms. The factories and textile mills closed their doors and time after time, the workers were left with either no pension or only a pittance of the pension they had expected.

For those workers who were shy of the retirement age of 60, 62, or in some cases 65, there was no pension—not a single dime—because the plan was not adequately funded.

In Lynn, the J. S. Barnet Co., closed its doors in the mid-1960's and the men who were not yet at retirement age but who had worked for 10 years or more had nothing to fall back on.

In New Bedford, the same story was told over and over as textile plants closed down. Berkshire Hathaway plants in Fall River-New Bedford alone employed some 4,000 workers. For every worker who had not yet reached age 62, the shutdown left them without benefits.

What is more tragic and more of an indictment, is that these incidents continue today. In a Senate Labor Subcommittee study of 469 pension plans in 1970, one-third had assets covering only 50 percent of their liabilities. The assets in the plan barely covered 25 percent of their liabilities in 7 percent of the plans.

When those plants close, another million workers will find themselves short-changed. Not only is there individual suffering that is the inevitable result but it is unnecessary suffering. Relatively little extra cost would be required on the part of employers to see that these funds are adequately funded.

The overall statistics have been all too well documented. In 1972 alone more than 15,000 pension plan participants lost all or a portion of their benefits because the plans terminated without sufficient funds to cover the plan's obligations. In several thousand cases, the workers lost every dime of the pension they were rightfully entitled to.

Perhaps the most egregious violation of trust involves those funds where trustees act irresponsibly to siphon money off for their own purposes or invest funds in questionable ventures. In each case, it is the long-time worker who suffers.

There is yet another problem that we discovered during the lengthy hearings into this subject. Many of the plans established long years of service before the worker is entitled to any pension benefits. Then,

all too often when the worker is approaching the time when his pension rights will be secured, he finds himself the victim of an abrupt termination.

Thus, the major problems with existing plans, beyond the obvious failure of more than half of all nonagricultural employees to be covered at all by any pension plan, are the following: inadequate funding, loss of pension benefits due to plan terminations, inadequate vesting, and misuse of pension funds.

The bill before us treats each of these problems in a major way.

First, it demands that plans for which employers are entitled to tax deductions must meet minimum standards of funding to assure that the workers will find enough money in the plan at their retirement.

Second, it provides for required insurance to cover the situation where a firm closes its doors and has insufficient funds to meet its pension obligations. The insurance will provide the same kind of guarantee that a bank depositor has in the Federal Deposit Insurance Corporation.

Third, it provides for earlier vesting to provide that a worker will accrue guaranteed pension benefits of 25 percent after 5 years and 100 percent after 15 years.

Fourth, it includes tough disclosure requirements and adds a means by which an employee can demand the same arbitration procedure that most union-management contracts now contain.

Finally, it includes additional protections against the misuse of trust funds, limiting the kinds of investments that can be made and designed to eliminate the conflicts of interest that have arisen in the past.

Mr. President, I believe the legislation now before us carries us forward toward the protection of the pension rights of American workers and I strongly urge its adoption.

Mr. GRIFFIN. Mr. President, the Senate is on the verge of passing milestone legislation to protect the pension rights of working men and women.

Although different in some respects than a pension reform bill I have introduced in the last two sessions of Congress, the compromise legislation now before the Senate is similar thereto in many respects. And, certainly enactment of this compromise will represent a great step forward; it will be a significant victory for the American worker.

The need for such legislation has been well documented. As just one example, back in 1964, when the Studebaker Co. closed its doors, about 4,000 workers were left without pensions after they had worked many years to earn entitlement.

Of course, it will not be possible to go back and remedy all the tragedies of past years. But any further delay in correcting obvious defects and inequities that exist now would be inexcusable.

Ironically, there are laws on the books to insure and safeguard bank deposits and to protect lenders who loan money to such borrowers as Penn Central and Lockheed. But at present there is no law to insure payment of the hard-earned pension benefits to which American workers are entitled.

A recently completed study conducted by the Departments of Treasury and Labor reveals that no less than 1,227 pension plans were ter-

minated in 1972, resulting in losses of pension benefits to over 19,000 workers. The average loss suffered by each worker exceeded $4,000.

These are grim statistics, but they do not tell the full story. In too many cases, a worker covered by a pension plan has worked 20 years or more for the same company, only to find that he still has no vested right to a pension. In fact, two out of every three covered workers today have no vested rights. Enactment of the pending compromise legislation will operate not only to insure payment of pension benefits once vested but it would also double the number of workers whose rights will be vested.

We are fortunate that a bill reported by the Committee on Labor and Public Welfare and a bill reported by the Committee on Finance are similar in many respects, and that a reasonable compromise has been worked out. While the compromise legislation is not perfect, I am pleased that it is stronger than either of the reported committee bills in a number of respects.

Much credit for the progress made so far should go to the distinguished senior Senator from New York (Mr. Javits) who has persistently and effectively fought for pension reform legislation over the years. In addition to supporting the efforts of the Senator from New York, I have long had my own version of comprehensive pension reform legislation before the Congress.

The bill I have introduced and reintroduced over the years has proposed—

Insurance protection for losses of vested pension benefits;

Vested pension rights for a worker after 10 years of employment under a pension plan;

Full disclosure of a worker's pension rights; and

Sanctions against mismanagement of pension funds.

I am pleased that the compromise legislation which is now nearing passage in the Senate does incorporate key features of my proposal, including provisions to give credit for past service.

This is particularly encouraging when one recalls that a bill reported last year by the Labor and Public Welfare Committee would have allowed credit toward vesting for past service only for those workers age 45 and older on date of enactment. In a speech delivered October 4, 1972, on the Senate floor, I emphasized the importance of recognizing past service for all covered workers in any bill to be enacted.

Unless credit for past service is recognized by the legislation to become law, any vesting provision would be only a cruel sham for millions of older workers who are nearing retirement at the present time. As a matter of fact, the Treasury Department estimates that 54 percent of the workers covered by pension plans who are over the age of 60 do not have vested rights to a pension.

Accordingly, I wish to commend the Labor and Public Welfare Committee for its action this year which has eliminated age distinction in the application of retroactive vesting.

Another important feature in the pending legislation is the requirement that employers who terminate a pension plan shall be liable for at least part of the losses which result from inadequate funding. Such liability will encourage more adequate funding and very careful consideration by management of the effects of terminating a plan.

Of course, there are areas of the pending legislation which could be improved. Of particular concern to me are the built-in delays in implementing the vesting and insurance requirements. As the compromise stands now vesting standards would not be effective until January 1, 1976, and pension benefits would not be guaranteed until January 1, 1977.

Under the proposal I have advocated both the vesting and insurance requirements would have been effective 1 year after enactment.

A 2-year delay in making the vesting standards effective could mean that thousands of workers will forfeit their hard-earned benefits during the waiting period.

A delay of 3 years before insurance is available means that 60,000 workers could lose a substantial portion, if not all, of their benefits. I am pleased, however, that the effective dates have been shortened considerably under the compromise amendment.

Although the compromise legislation provides partial vesting for less than 10 years of service, it provides for only 50 percent vesting after 10 years of employment under a pension plan. Full vesting is not required until 15 years of service, as compared with 10 years under my proposal. The 100 percent, 10-year vesting standard which I have proposed is already included in plans covering more than 21 percent of all pension plan participants.

Mr. President, while improvements could always be made, it is of utmost importance for Congress to pass this compromise because it appears to strike the best balance possible at the present time.

It has been 14 years since Congress approved any type of pension protection legislation. That action followed closely on the heels of the Landrum-Griffin Act in 1959. Additional reforms are urgently needed now.

I strongly urge the Senate to pass this legislation by an overwhelming vote.

Mr. Pell. Mr. President, I would strongly urge the Senate to pass S. 4, the private pension reform bill of 1973. This bill and some of its proposed amendments are the result of months of consideration and research, on the part of the Labor Subcommittee of the Labor and Public Welfare Committee of which I am a member, and also reflects the discussions I have had and letters I have received from hundreds of my fellow Rhode Islanders.

This bill will take a long and much needed first step in guaranteeing pension rights to tens of thousands of Rhode Island working men and women.

It will assure workers who retire, or who change jobs or employers, or whose employers go out of business, of a fair and equitable return on the pension contributions they and their employers have been making. Additionally, this bill will protect workers whose employers mis-manage pension funds or go out of business without pension assets to meet their commitments.

Since I have been in the Senate, I have heard what I can only describe as horrible stories of private pension failure or mismanagement. I believe that today we have the opportunity to make pension systems more responsive to the needs and expectations of all of the workers of our Nation.

Mr. DOLE. Mr. President, private pension plans are an extremely important feature of the economic and social fabric of our country today.

Nearly 100 years ago, in 1875, the first formal private pension plan in the United States was established by the American Express Co. We have taken giant strides since that first plan was established. Today, more than 35 million Americans are participating in private pension plans. This number represents a sevenfold increase since 1940, and over the same period, the assets held by these plans have grown from $12.1 billion to more than $150 billion. More than 6 million retired persons now draw benefits from these plans. The outlook for the future indicates that private pension plans will continue to expand in importance as their participants increase and as they serve still more of the rapidly expanding retirement age group.

GROWTH OF THE PRIVATE PENSION SYSTEM

The greatest period of sustained growth in the number of persons covered by private plans has occurred in the post-1942 period. A number of factors can be underscored as significantly stimulating this growth. However, the Revenue Act of 1942, which granted tax deductibility for contributions to fund past service credits for the first time, must be viewed as a key factor in the growth of our private pension system. As a result of this expansion in coverage of private pension plans, approximately 50 percent of our civilian, nonagricultural work force is now covered by such plans.

Expansion of our private pension system has been encouraged as an effective means of providing individuals from all walks of life with an adequate source of income after retirement. Putting aside a portion of earnings during a person's most productive years, is in keeping with the most basic American traditions of thrift, self-sufficiency, and concern for the future. It was recognized at an early date that many individuals' funds could be combined, managed, and administered effectively with the result that the whole is greater than the sum of its parts. And with the cooperation and participation of employers, a significant system of retirement security has been created by the private sector of the economy.

LEGISLATION REPORTED

In favorably reporting S. 1179 to the Senate, the committee has proposed legislation which should continue to encourage the expansion of the private pension system as well as assure each participant of those benefits to which he is legally and equitably entitled.

KEY PROVISIONS ADOPTED

The committee has adopted certain minimum standards which will apply to all qualified pension plans. To obtain increased participation, qualified plans will have to cover all employees who have completed 1 year of service or who have attained age 30—whichever occurs later. In addition, a system of graded vesting has been adopted to provide all employees with limited nonforfeitable rights to pension benefits funded by employer contributions after a minimum work period. Every employee covered under a qualified pension plan will accrue a

vested right to 25 percent of employer pension contributions after 5 years of employment, a 5 percent per year additional interest in such contributions for the next 5 years, and a 10 percent per year additional interest in these contributions for the next 5 years. Thus, after 5 years an employee will have a 25-percent interest, after 10 years, a 50-percent interest, and after 15 years, a 100-percent interest in these contributions.

This provision will eliminate any recurrence of a situation possible under present law where an individual's employment can be terminated prior to his normal retirement date and such early termination disqualifies him from receiving any pension benefits from a qualified plan under which he may have been covered for some extended working period. This provision also recognizes the need for greater job mobility brought about by the shifting requirements of a high-technology economy.

The committee bill includes new funding requirements which are designed to afford greater protection for the rights of covered employees as well as to provide an orderly and systematic method for employers to meet their pension plan costs. These new provisions require an employer to fund the costs attributable to current plan operations—as under present law—and to amortize all unfunded past service liabilities in level payments over no more than a 30-year period.

Consistent with the provisions already explained, the committee has also adopted tighter fiduciary and reporting standards to insure proper management of pension funds required to be set aside.

OTHER PROVISIONS

To my view, the vesting and funding provisions of S. 1179 are the heart of the bill. From the testimony of the many witnesses heard by the committee, numerous studies which have been conducted, and discussion during executive session consideration, I am persuaded that by strengthening and safeguarding the standards and requirements for the management and operation of private pension funds, the committee has taken important and wise steps toward reform of the private pension system. As far as further measures—particularly in terms of portability and plan termination insurance—are concerned, there is some question whether they are of the same order of importance or necessity. The private pension field is extremely complex and intricate. Congress should be cautious, lest it attempt to do too much too fast, for we do not want to risk defeating our basic objective which is to provide incentives for expanding and strengthening the entire system.

As I indicated, the vesting and funding provisions of the Finance Committee's bill are valuable and constructive initiatives which are overdue for enactment.

The vesting and funding provisions we have agreed upon may very likely—and it is our sincere hope—make pension plans so safe and secure that the risk of failure will become negligible and insurance against it unnecessary.

The concept of voluntary portability has been included in the bill, but I believe we must not lose sight of the fact that the private pension system is private. It has been established through agreements between

employers and employees. It is not social security and as long as an individual has protection for his rights to benefits with any employer, I do not know whether portability adds much from the employee's point of view, and its administration certainly has many negative aspects for employers and in the creation of another bureaucracy to oversee it. In any event it should be noted that portability is voluntary and there is no intention of making it mandatory.

GREATER EQUITY OF PENSION PLANS

The committee has also adopted a series of provisions designed to improve and bring greater comparability to the pension benefits available to individuals not covered by any qualified pension plan; to self-employed individuals covered by H.R. 10 type retirement plans; and to proprietary employees of closely held corporations covered by qualified retirement plans. These provisions basically provide:

First. An individual not participating in any pension plan will be permitted to set aside up to $1,000 per year of earned income in his own individual retirement fund and deduct the amount set aside in computing his Federal income tax liability each year.

I would emphasize that this portion of the bill—major credit for which should go to the Senator from Nebraska (Mr. Curtis)—goes a long way toward eliminating a major instance of discrimination in our laws. Millions of Americans currently are not covered by any private retirement system which offers the tax benefits of corporate or H.R. 10 plans. By allowing these people to set up their own plans we will do a great deal to make their futures more secure and provide greater tax equity for all our citizens.

Second. A self-employed individual covered under an H.R. 10 type plan will be able to increase his tax deductible pension contribution from 10 percent of earned income, up to a maximum of $2,500 per year—current law—to 15 percent of earned income or a maximum of $7,500 per year—or $500 of earned income, if greater.

Third. Proprietary employees of closely held corporations are now made subject to pension plan limitations so as to treat them more similarly to self-employed individuals. This limitation, although originally identical to that imposed on a self-employed individual, has been modified by the committee because it was believed to be too restrictive.

However, the limitations were placed on the total amounts of benefits which could be funded, rather than on the contributions which could be made to provide those benefits.

The enforcement of these new pension plan requirements will be handled through the Internal Revenue Service. To insure that adequate enforcement activity is possible, a new Assistant Commissioner of Internal Revenue to deal with pension plans and other exempt organizations is created under the bill. Employees are also provided with a statutory right to submit pension plan grievances to the Secretary of Labor for administrative decision.

Lastly, the committee bill revises the taxation of lump-sum distributions for qualified pension plans to simplify the computation of tax liability on account of such distributions. Under this provision all pre-1974 value is taxed as capital gain. The balance of such distribu-

tions are taxed as ordinary income under a separate tax schedule based upon 15-year averaging for such income.

In sum, this bill makes landmark changes in our private pension system which improve and insure the rights of all covered employees. This has been accomplished without increasing employer costs beyond manageable levels. The chairman and the other members of the Committee on Finance who have devoted so much time and effort to this bill are to be congratulated on their efforts and deserve the thanks of millions of Americans who will be favorably affected by this bill.

I also wish to indicate my support for several amendments offered on the Senate floor in addition to the amendment adopted by the Finance Committee on September 14.

Two, offered by the Senator from South Carolina (Mr. Thurmond) and which I cosponsored, would provide greater equality between the pension benefits of proprietary employees and regular corporate employees. They would extend to proprietary employees the 15-year averaging for lump-sum distributions as well as the $5,000 death benefits provision; and make the portability provision available, just as it is to regular corporate employees.

Another amendment, No. 506, offered by the Senator from Wisconsin (Mr. Nelson), extends the rule on limitations on maximum pension benefits to executives of all corporations, not just proprietary employees. This rule limiting benefits, rather than contributions, was adopted by the Finance Committee on Friday. And if it is a sound rule in the proprietary corporation setting, I believe it should also apply to the executives of any corporation.

I ask unanimous consent that the committee press release explaining the amendments adopted in executive session on September 14, be printed in the Record.

There being no objection, the release was order to be printed in the Record, as follows:

PRESS RELEASE: FINANCE COMMITTEE APPROVES AMENDMENTS TO S. 1179, PENSION REFORM BILL

The Honorable Russell B. Long (D. La.), Chairman of the Committee on Finance had reconsidered, and approved amendments to, certain provisions of S. 1179 (Pension Reform Act of 1973). The principal amendments relate to the limitations on pension plan contributions for the benefit of corporate owner-managers, i.e., employees having a more than two percent ownership interest in the stock of a corporation, when all such persons in a particular corporation in the aggregate have more than a 25 percent interest in the benefit of the corporate pension plan.

1. *Limitation on contributions for owner-managers.*—S. 1179 provides that retirement plan contributions on behalf of such owner-managers referred to in the bill as proprietary employees, are to be subject to the same limitations as apply to the self-employed plans. Under S. 1179 deductible contributions to a self-employed plan are permitted equal to 15 percent of earned income up to $100,000, but not in excess of $7,500. The Committee agreed to an amendment which would delete the contribution limitations on proprietary employees in S. 1179 and substitute therefor a rule expressed as a limitation on the stated pension benefit which may be provided a proprietary employee. The limitation is that the pension of a proprietary employee under a plan shall not exceed 75 percent of the average of the employee's highest three years of compensation, with a limitation that average compensation in excess of $100,000 will be disregarded. Hence, the maximum pension benefit permitted a proprietary employee is $75,000. This maximum benefit is to be funded over the remaining working life of the employee, but may not be funded over a period of less than 10 years. In the case of a profit-

sharing or money-purchase plan, the amount contributed on behalf of a proprietary employee would be subject to limitations corresponding in substance to the limitations on contributions on behalf of proprietary employees under a stated benefit plan.

2. *Integration rules for plans keyed with Social Security.*—Under the provisions of S. 1179, as initially reported by the Committee, certain restrictions were imposed upon plans benefitting proprietary employees, including a limitation on the use of a formula which would integrate such plans with social security benefits. Upon further reflection, the Committee has determined that such a restriction would be counter productive and have the effect of dampening interest in the establishment of qualified pension plans by some corporations. Therefore, the Committee has decided to retain the provisions of present law which permit such corporations to integrate their plans with Social Security.

3. *Special rule for partnerships.*—The Committee also agreed to a modification of the provisions governing contributions to qualified plans for self-employed individuals. In an effort to provide an additional inducement to partnerships to establish qualified pension plans covering individual partners and their employees, it was decided to permit the maximum pension plan contribution for each of the partners to be aggregated and allocated among the partners pursuant to an agreed upon formula. This provision will permit a contribution in excess of $7,500 to be made on behalf of an older partner to enable funding of a larger pension benefit than he would otherwise be able to fund were he limited to the maximum amount of $7,500 for any one individual. At the same time, this provision will not increase the total deduction for qualified pension plan contributions by the members of the partnership.

4. *Investments by profit sharing funds.*—The Committee also agreed to an amendment to the fiduciary provisions of S. 1179 which would permit a profit sharing fund to invest its assets in property of the employer under a sale and leaseback arrangement.

Mr. LONG. Mr. President, in a moment I will make a motion concerning further procedure on pension legislation. But first I would like to explain to the Senate what it is I intend to do.

In its action on S. 4, the Senate has approved major changes in our tax laws. If we were now to proceed to pass S. 4 under that number, the House would refuse to consider the bill on the constitutional grounds that revenue bills must originate in the House of Representatives.

The Senate may not originate revenue bills, but it may amend them. The Finance Committee has favorably reported H.R. 4200, a House-passed bill designed to continue the same tax treatment for survivors of servicemen and former servicemen under the recently enacted survivor benefit plan as formerly was available under the prior law.

I will move that everything the Senate has approved in its action on S. 4 be added as an amendment to H.R. 4200. In this way, we will meet any constitutional objections to House consideration of what we have done.

AMENDMENT OF INTERNAL REVENUE CODE

Mr. LONG. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of H.R. 4200, Calendar No. 370.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk as follows:

A bill (H.R. 4200) to amend section 122 of the Internal Revenue Code of 1954.

[The texts of H.R. 4200 as reported in the Senate, and S. Rept. 93–394, appears on pp. 1570–1578.]

The PRESIDING OFFICER. Without objection, the Senate will proceed to its consideration.

Mr. LONG. Mr. President, I now offer the language of S. 4 as amended as an amendment to be added at the end of the pending bill (H.R. 4200).

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Louisiana.

The amendment was agreed to.

Mr. LONG. Mr. President, I wish to state, for the benefit of the Senator from Texas (Mr. Tower), since he is interested in offering an amendment to H.R. 4200, that I will assure him he will have the opportunity to offer his amendment and have it considered in connection with another revenue measure which we will report to the Senate as early as we possibly can, so that he will have an opportunity to have consideration of his amendment, which is not essential to H.R. 4200.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment of the amendment and the third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill (H.R. 4200) was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

Mr. MANSFIELD. Mr. President, if the Senate will bear with me, some of our colleagues are down at the White House at this moment. I would suggest, with the approval of the Senate, that we turn to the consideration of Calendar No. 373, S. 2410, and then have back-to-back votes on the two measures.

Mr. JAVITS. Mr. President, I thoroughly agree with the Senator, except that I should like to ask him, could he set a time to vote, so that we would not have further debate on the bill that has had third reading, but could still be debated?

Mr. MANSFIELD. No, no; it was my understanding that we were ready to vote on the other measure.

Mr. LONG. Would the Senator permit us to have third reading on H.R. 4200?

The PRESIDING OFFICER. The bill has been read the third time.

Mr. JAVITS. Mr. President, with the majority leader's consent, I ask unanimous consent that after the vote has been taken on the emergency medical services bill tonight, we will immediately proceed to vote on the bill now before the Senate.

The PRESIDING OFFICER. And that rule XII be waived?

Mr. JAVITS. And that rule XII be waived.

Mr. MANSFIELD. Yes, the regular procedure.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that it be in order at this time to ask for the yeas and nays on S. 2410.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MANSFIELD. I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. MANSFIELD. Mr. President, do we have the yeas and nays on S. 4200?

The PRESIDING OFFICER. The yeas and nays have not been ordered.

Mr. MANSFIELD. I ask for the yeas and nays.

The yeas and nays were ordered.

* * * * * * *

AMENDMENT OF INTERNAL REVENUE CODE

The Senate continued with the consideration of the bill (H.R. 4200) to amend section 122 of the Internal Revenue Code of 1954.

The PRESIDING OFFICER. Pursuant to the previous order, the Senate will proceed to the consideration of H.R. 4200. The yeas and nays have been ordered.

Mr. JAVITS. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. JAVITS. Mr. President, as I understand it, the bill now being voted on——

The PRESIDING OFFICER. The Senator will suspend. The Chair cannot hear the Senator. The Senate will be in order.

The Senator may proceed.

Mr. JAVITS. Mr. President, the bill being voted on contains the amendments which were before us for the last 2 days as S. 4, the retirement security bill. Is that correct?

The PRESIDING OFFICER. The bill contains S. 4 as amended by the Senate.

Mr. JAVITS. I thank the Chair.

The PRESIDING OFFICER. The question is, Shall the bill pass? The yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk proceeded to call the role.

Mr. ROBERT C. BYRD. I announce that the Senator from Michigan (Mr. Hart), and the Senator from Montana (Mr. Metcalf) are necessarily absent.

Mr. GRIFFIN. I announce that the Senator from Utah (Mr. Bennett) is absent on official business.

I also announce that the Senator from Oklahoma (Mr. Bellmon), and the Senator from Kansas (Mr. Pearson) are absent because of illness.

I further announce that the Senator from Arizona (Mr. Goldwater), and the Senator from Ohio (Mr. Saxbe) are necessarily absent.

The result was announced—yeas 93, nays 0, as follows:

[No. 400 Leg.]

YEAS—93

Abourezk	Bible	Cannon
Aiken	Biden	Case
Allen	Brock	Chiles
Baker	Brooke	Church
Bartlett	Buckley	Clark
Bayh	Burdick	Cook
Beall	Byrd, Harry F., Jr.	Cotton
Bentsen	Byrd, Robert C.	Cranston

Curtis	Humphrey	Pell
Dole	Inouye	Percy
Domenici	Jackson	Proxmire
Dominick	Javits	Randolph
Eagleton	Johnston	Ribicoff
Eastland	Kennedy	Roth
Ervin	Long	Schweiker
Fannin	Magnuson	Scott, Pa.
Fong	Mansfield	Scott, Va.
Fulbright	Mathias	Sparkman
Gravel	McClellan	Stafford
Griffin	McClure	Stennis
Gurney	McGee	Stevens
Hansen	McGovern	Stevenson
Hartke	McIntyre	Symington
Haskell	Mondale	Taft
Hatfield	Montoya	Talmadge
Hathaway	Moss	Thurmond
Helms	Muskie	Tower
Hollings	Nelson	Tunney
Hruska	Nunn	Weicker
Huddleston	Packwood	Williams
Hughes	Pastore	Young

NAYS—0

NOT VOTING—7

Bellmon	Hart	Saxbe
Bennett	Metcalf	
Goldwater	Pearson	

So the bill (H.R. 4200) was passed.

Mr. Javits. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. Williams. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. Long. Mr. President, I ask unanimous consent that S. 4 be indefinitely postponed.

The Presiding Officer. Without objection, it is so ordered.

Mr. Long. Mr. President, I ask unanimous consent that the bill (H.R. 4200) be printed with the amendment of the Senate; and that in the engrossment of the amendment of the Senate to the bill the Secretary of the Senate be authorized to make all appropriate technical, clerical, and conforming changes and corrections, including corrections in section, subsection, and so forth, designations, and cross-references thereto, with appropriate changes in the table of contents.

The Presiding Officer. Without objection, it is so ordered.

[The text of H.R. 4200, as passed by Senate, Sept. 19, 1973, follows:]

93D CONGRESS
1ST SESSION

H. R. 4200

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 19, 1973

Ordered to be printed with the amendment of the Senate

[Insert the part printed in italic]

AN ACT

To amend section 122 of the Internal Revenue Code of 1954.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 122 (a) of the Internal Revenue Code of 1954 (relating to certain reduced uniform services retirement pay) is amended to read as follows:

"(a) GENERAL RULE.—In the case of a member or former member of the uniformed services of the United States, gross income does not include the amount of any reduction in his retired or retainer pay pursuant to the provisions of chapter 73 of title 10 of the United States Code."

(b) Section 122 (b) (2) of such Code is amended by

II—O

striking out "section 1438" in subparagraph (B) and inserting in lieu thereof "section 1438 or 1452 (d)".

(c) Section 72 (o) of such Code is amended by inserting after "PLAN" in the heading of such section "OR SURVIVOR BENEFIT PLAN".

(d) Section 101 (b) (2) (D) of such Code is amended by striking out "if the individual who made the election under such chapter" and inserting in lieu thereof "if the member or former member of the uniformed services by reason of whose death such annuity is payable".

(e) Section 2039 (c) of such Code is amended by striking out "section 1438" in the last sentence and inserting in lieu thereof "section 1438 or 1452 (d)".

(f) The amendments made by subsections (a), (b), and (c) shall apply to taxable years ending on or after September 21, 1972. The amendments made by subsections (d) and (e) shall apply with respect to individuals dying on or after such date.

SEC. 2. (a) This Act, other than the first section, may be cited as the "Retirement Income Security for Employees Act".

(b) TABLE OF CONTENTS.—

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Sec. 241. Minimum standards relating to funding.

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PART A—DISPUTES RELATING TO THE QUALIFICATION OF CERTAIN EMPLOYEE PLANS

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Sec. 701. Deduction for retirement savings.
Sec. 702. Certain plans.
Sec. 703. Taxation of certain lump-sum distributions.
Sec. 704. Contributions on behalf of self-employed individuals and proprietary employees.
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Sec. 706. Miscellaneous provisions.

(c) Amendmene of 1954 Code.—Except as otherwise expressly provided, whenever in this Act an amendment is expressed in terms of an amendment to a section or other provision, the reference is to a section or other provision of the Internal Revenue Code of 1954.

TITLE I—ADMINISTRATION

PART A—INTERNAL REVENUE SERVICE

SEC. 101. ESTABLISHMENT OF OFFICE.

(a) IN GENERAL.—Section 7802 (relating to Commissioner of Internal Revenue) is amended to read as follows:

"SEC. 7802. COMMISSIONER OF INTERNAL REVENUE; ASSISTANT COMMISSIONER.

"(a) COMMISSIONER OF INTERNAL REVENUE.—There shall be in the Department of the Treasury a Commissioner of Internal Revenue, who shall be appointed by the President by and with the advice and consent of the Senate. The Commissioner of Internal Revenue shall have such duties and powers as may be prescribed by the Secretary.

"(b) ASSISTANT COMMISSIONER FOR EMPLOYEE PLANS AND EXEMPT ORGANIZATIONS.—There is established within the Internal Revenue Service an office to be known as the 'Office of Employee Plans and Exempt Organizations'. The Office shall be under the supervision and direction of an Assistant Commissioner of Internal Revenue. As head of the Office, the Assistant Commissioner shall be responsible for carrying out such functions as the Secretary or his delegate may prescribe with respect to organizations exempt from tax under section 501(a) and with respect to plans to which part I of subchapter D of chapter 1 applies (and with respect to organizations designed to be exempt under such section and plans designed to be plans to which such part applies).".

(b) SALARIES.—

(1) ASSISTANT COMMISSIONER.—Section 5109 of

title 5, United States Code, is amended by adding at the end thereof the following new subsection:

"(c) The position held by the employee appointed under section 7802(b) of the Internal Revenue Code of 1954 is classified at GS–18, and is in addition to the number of positions authorized by section 5108(a) of this title.".

(2) CLASSIFICATION OF POSITIONS AT GS–16 AND 17.—Section 5108 of title 5, United States Code, is amended by adding at the end thereof the following new subsection:

"(e) In addition to the number of positions authorized by subsection (a), the Commissioner of Internal Revenue is authorized, without regard to any other provision of this section, to place a total of 20 positions in the Internal Revenue Service in GS–16 and 17.".

(c) CLERICAL AMENDMENT.—The table of sections for subchapter A of chapter 80 is amended by striking out the item relating to section 7802 and inserting in lieu thereof the following:

"Sec. 7802. Commissioner of Internal Revenue; Assistant Commissioner.".

SEC. 102. AUTHORIZATION OF APPROPRIATIONS.

(a) INITIAL AUTHORIZATION.—There is authorized to be appropriated to the Department of the Treasury for the purpose of carrying out all functions of the Office of Employee Plans and Exempt Organizations for each of the fiscal

years ending June 30, 1974, June 30, 1975, and June 30, 1976, an amount equal to the sum of $35,000,000 and one-half of the collections from the taxes imposed under section 4940 of the Internal Revenue Code of 1954 (relating to excise tax based on investment income) during the second preceding fiscal year.

(b) PERMANENT AUTHORIZATION.—There is authorized to be appropriated to the Department of the Treasury for the purpose of carrying out all functions of the Office of Employee Plans and Exempt Organizations for each fiscal year beginning after June 30, 1976, an amount equal to the sum of—

(1) the amount of the collection from the taxes imposed under section 4975 of the Internal Revenue Code of 1954 (relating to annual tax on plan participation) during the second preceding fiscal year, and

(2) one-half of the collections from the taxes imposed under section 4940 of such Code (relating to excise tax based on investment income) during the second preceding fiscal year.

PART B—REGISTRATION

SEC. 151. DUTIES OF PLANS.

(a) ANNUAL REGISTRATION.—Within such period after the end of a plan year as the Secretary of the Treasury may prescribe, the administrator of each plan to which

part I of subchapter D of chapter 1 of the Internal Revenue Code of 1954 applied at any time during such plan year, and each pension plan operated by the Government of the United States, or by the government of any State (including the District of Columbia) or political subdivision thereof, or by an agency or instrumentality thereof, shall file a registration statement with the Secretary of the Treasury. The registration statement shall set forth—

(1) the name and address of the plan,

(2) the name and taxpayer identification number of each individual who has a right to a deferred vested benefit in that plan as of the end of such plan year (other than those individuals who were paid retirement benefits under that plan during such plan year) and who has terminated his employment with the employer, who established and maintained that plan, within that year,

(3) the nature, amount, and form of any such deferred vested benefit, and

(4) such additional or other information as the Secretary may require.

(b) CHANGES IN STATUS.—The administrator of any plan required to be registered under section (a) shall also notify the Secretary, at such time as the Secretary may prescribe, of—

(1) any change of address of the plan,

(2) any change of name of the plan,

(3) the termination of the plan, or

(4) the merger or consolidation of the plan with any other plan.

(c) VOLUNTARY REPORTS.—The Secretary is authorized and directed to receive such additional reports relating to plan years ending before January 1, 1974, as the administrator of any such plan may wish to file with him relating to the deferred vested benefit rights of any person terminating his employment during any such plan year with the employer who established and maintained the plan.

(d) TRANSMISSION OF INFORMATION TO SECRETARY OF HEALTH, EDUCATION, AND WELFARE; REGULATIONS.—The Secretary of the Treasury shall transmit any statements, reports, or other information obtained by him under this section to the Secretary of Health, Education, and Welfare at such times and in such form as the Secretary of Health, Education, and Welfare may require in order to carry out his responsibilities under section 1131 of the Social Security Act. The Secretary of the Treasury, after consultation with the Secretary of Health, Education, and Welfare, is authorized to prescribe such regulations as may be necessary to carry out the provisions of this section.

(e) DEFINITION OF ADMINISTRATOR.—For purposes of this section, the term "administrator" means the person or

persons described in section 3(15) of the Welfare and Pension Plans Disclosure Act.

(f) CERTIFICATE OF RIGHTS.—Each plan administrator filing a registration statement under subsection (a) shall also furnish to each individual described in paragraph (2) of that subsection, within the time prescribed for the filing of the registration statement, a statement setting forth the information with respect to that individual required in the registration statement. At the time he files the registration statement with the Secretary, the administrator of a plan shall furnish evidence satisfactory to the Secretary that he has complied with the requirements of this subsection.

SEC. 152. DUTIES OF SECRETARY OF HEALTH, EDUCATION AND WELFARE.

Title XI of the Social Security Act (relating to general provisions) is amended by adding at the end of part A thereof the following new section:

"NOTIFICATION OF SOCIAL SECURITY CLAIMANT WITH RESPECT TO VESTED PENSION BENEFITS

"SEC. 1131. (a) Whenever the Secretary makes a finding of fact and a decision as to—

"(1) the entitlement of any individual to monthly insurance benefits under section 202, 223, or 228,

"(2) the entitlement of any individual to a lump-sum death payment payable under section 202(i) on

account of the death of any person to whom such individual is related by blood, marriage, or adoption, or

"(3) the entitlement under section 226 of any individual to hospital insurance benefits under part A of title XVIII,

or upon request made by any individual with respect to whom the Secretary holds information obtained under section 151 of the Retirement Income Security for Employees Act, he shall furnish to such individual any information regarding any vested right to a pension benefit acquired by the Secretary pursuant to such section with respect to the person on whose wages and self-employment income entitlement (or claim of entitlement) is based.

"(b)(1) For purposes of section 201(g)(1), expenses incurred in the administration of subsection (a) shall be deemed to be expenses incurred for the administration of the Federal old-age and survivors insurance program.

"(2) There are hereby authorized to be appropriated to the Federal Old-Age and Survivors Insurance Trust Fund for each fiscal year (commencing with the fiscal year ending June 30, 1974) such sums as the Secretary deems necessary on account of additional administrative expenses resulting from the enactment of the provisions of subsection (a).".

SEC. 153. EFFECTIVE DATE.

This part shall take effect upon the date of enactment of this Act, but the requirements of section 151 (a) and (b) shall apply only with respect to plan years ending after December 31, 1973.

SEC. 154. AUTHORIZATION OF APPROPRIATIONS FOR DEPARTMENT OF LABOR.

There are authorized to be appropriated such sums as may be necessary to enable the Secretary of Labor to carry out his functions and duties under this Act.

TITLE II—PARTICIPATION; VESTING; FUNDING; CERTAIN BENEFITS

PART A—PARTICIPATION

SEC. 201. MINIMUM STANDARDS RELATING TO PARTICIPATION.

(a) IN GENERAL.—Part I of subchapter D of chapter 1 (relating to pensions, etc., plans) is amended by inserting at the end thereof the following new subpart:

"Subpart B—Special Rules

"Sec. 410. Minimum standards relating to participation.

"SEC. 410. MINIMUM STANDARDS RELATING TO PARTICIPATION.

"(a) PARTICIPATION.—

"(1) MAXIMUM CONDITION.. A trust shall not

constitute a qualified trust under section 401(a) if the plan of which it is a part requires, as a condition of participation in the plan, that an employee have a period of service with the employer (including, to the extent provided in regulations prescribed by the Secretary or his delegate, a predecessor of the employer) extending beyond the later of—

"(A) one year of service, or

"(B) the date on which the employee attains the age of 30 years.

"(2) DEFINITIONS.—For purposes of this subsection—

"(A) YEAR OF SERVICE.—The term 'year of service' means a calendar, plan, or fiscal year (whichever is applied on a consistent basis under the plan) during which the employee is employed by the employer for more than 5 months.

"(B) MONTH.—The term 'month' means any calendar month during which the employee is employed for at least 80 hours of employment.

"(b) ELIGIBILITY.—

"(1) IN GENERAL.—A trust shall not constitute a qualified trust under section 401(a) unless the trust, or two or more trusts, or the trust or trusts and annuity plan or plans are designated by the employer as con-

stituting parts of a plan intended to qualify under section 401(a) which benefits either—

"(A) 70 percent or more of all the employees, or 80 percent or more of all the employees who are eligible to benefit under the plan if 70 percent or more of all the employees are eligible to benefit under the plan, excluding in each case employees who have not satisfied the minimum age and service requirements, if any, prescribed by the plan as a condition of participation, employees whose customary employment is for not more than 80 hours in any one month, and employees whose customary employment is for not more than 5 months in any calendar, plan, or fiscal year (whichever is applied on a consistent basis under the plan), or

"(B) such employees as qualify under a classification set up by the employer and found by the Secretary or his delegate not to be discriminatory in favor of employees who are officers, shareholders, or highly compensated employees.

"(2) EXCLUSION OF CERTAIN EMPLOYEES.—For the purpose of determining whether a trust constitutes a qualified trust under paragraph (1), there shall be excluded from consideration—

"(A) employees who are included in a unit of employees covered by an agreement which the Secretary or his delegate finds to be a collective bargaining agreeement between employee representatives and one or more employees, if such agreement does not provide that such employees are to be included in the plan, and if there is evidence that retirement benefits were the subject of good faith bargaining between such employee representatives and such employer or employers during the most recently concluded contract negotiations which were the subject of bargaining between such representatives and the employer or employers, and

"(B) employees who are nonresident aliens who have no earned income (within the meaning of section 911(b)) from sources within the United States (within the meaning of section 861(a)(3)).

"(3) Affiliated groups of employers.—For purposes of this subsection, section 401(a)(4), and section 411, all employees of all corporations that are members of a controlled group of corporations (within the meaning of section 1563(a)) shall be deemed to be employed by a single employer."

(b) Conforming Amendments.—

(1) Section 401(a) (relating to requirements for qualification) is amended by—

(A) striking out paragraph (3) and inserting in lieu thereof:

"(3) if the plan of which such trust is a part meets the requirements of section 410 (relating to minimum standards relating to participation); and", and

(B) striking out "paragraph (3)(B) or (4)" in paragraph (5) and inserting in lieu thereof "paragraph (4) or section 410(b) (without regard to paragraph (1)(A) thereof)".

(2) Section 406(b)(1) (relating to certain employees of foreign subsidiaries) is amended by striking out "paragraphs (3)(B) and (4) of section 401(a)" and inserting in lieu thereof "paragraph (4) of section 401(a) and subsection (b) of section 410 (without regard to paragraph (1)(A) thereof)".

(3) Section 407(b)(1) (relating to certain employees of domestic subsidiaries engaged in business outside the United States) is amended by striking out "paragraphs (3)(B) and (4) of section 401(a)" and inserting in lieu thereof "paragraph (4) of section 401(a) and subsection (b) of section 410 (without regard to paragraph (1)(A) thereof)".

(c) Clerical Amendment.—Part I of subchapter D of chapter 1 is amended by inserting after the heading and before the table of sections the following:

"Subpart A. General Rule.
"Subpart B. Special Rules.

"Subpart A—General Rule".

(d) Effective Date.—

(1) Except as provided in paragraph (2), the amendments made by this section shall apply to plan years beginning after the date of enactment of this Act.

(2) In the case of a plan in existence on the date of enactment of this Act, the amendments made by this section shall apply—

(A) to plan years beginning after December 31, 1975, or

(B) if later (in the case of a plan maintained pursuant to an agreement which the Secretary of the Treasury finds to be a collective-bargaining agreement between employee representatives and one or more employers), to plan years beginning after the earlier of—

(i) the date on which the agreement terminates (determined without regard to any extension thereof agreed to after the date of enactment of this Act), or

(ii) December 31, 1980.

PART B—VESTING

SEC. 221. MINIMUM STANDARDS RELATING TO VESTING.

(a) In General.—Subpart B of part I of subchapter D of chapter 1 (relating to special rules), as added by section 201 of this Act, is amended by inserting after section 410 the following new section:

"SEC. 411. MINIMUM STANDARDS RELATING TO VESTING.

"(a) General Rule.—Except as provided in subsection (c), a trust shall not constitute a qualified trust under section 401(a) unless the plan of which such trust is a part satisfies the requirements of paragraphs (1) and (2).

"(1) Employee contributions.—A plan satisfies the requirements of this paragraph if, under the plan, an employee's rights in his accrued benefit derived from his own contributions are nonforfeitable.

"(2) Employer contributions.—

"(A) Nonforfeitable percentage.—A plan satisfies the requirements of this paragraph if, under the plan, after 5 years of service (3 of which are consecutive) with an employer, an employee has a right to a percentage of his accrued benefit derived from employer contributions which is nonforfeitable other than by reason of death. The per-

centage shall not be less than the percentage determined under the following table:

"Years of service	*Nonforfeitable percentage*
5	*25*
6	*30*
7	*35*
8	*40*
9	*45*
10	*50*
11	*60*
12	*70*
13	*80*
14	*90*
15 or more	*100*

"(B) YEAR OF SERVICE.—For purposes of this paragraph, the term 'year of service with the employer' means—

"(i) with respect to plan years ending before January 1, 1982, a year in which an employee is employed more than a number of months (for not less than a number of hours in each such month) prescribed in regulations promulgated by the Secretary or his delegate after consultation with the Secretary of Labor, and shall include service with a predecessor of the employer to the extent provided in regulations prescribed by the Secretary or his delegate; and

"(ii) with respect to plan years ending after December 31, 1981, any calendar, plan, or fiscal year (whichever is applied on a con-

sistent basis under the plan) in which an employee is employed for more than 5 months (if he is employed at least 80 hours in each of such 5 months) in such year with the employer who adopted the plan (including, to the extent provided in regulations prescribed by the Secretary or his delegate, a predecessor of the employer).

"(C) TENTH YEAR VESTING FOR CERTAIN PLANS.—Paragraph (A) shall not apply to a trust which meets the requirements of section 401(a) and is exempt from tax under section 501(a) or a plan which meets the requirements of section 404(b)(2), if such trust or plan was in existence and met such requirements on the date of enactment of the Retirement Income Security for Employees Act and if the plan of which such trust is a part, or such plan, provides on and after such date that each employee's rights to or derived from employer contributions become completely nonforfeitable (other than by reason of death) no later than the end of the tenth year of service of the employee with the employer who maintains the plan. A plan described in this subparagraph meets the requirements of this paragraph.

"(D) Special rules.—For purposes of determining the nonforfeitable percentage—

"(i) no year of service which begins more than 5 years prior to the beginning of the year in which an employee is first eligible to participate in the plan shall be considered, unless with respect to such year, the employee makes contributions under the plan or the employer makes contributions under the plan on behalf of such employee,

"(ii) years of service shall include any years beginning on or after the date the plan was first effective, and

"(iii) years of service beginning prior to the enactment of the Retirement Income Security for Employees Act and on or after the date on which the plan was first effective (or any amendment thereto was first effective) shall be considered.

"(b) Definitions and Rules Relating to Accrued Benefits.—

"(1) Employee's accrued benefit.—

"(A) In general.—For purposes of this section, an employee's accrued benefit as of any applicable date is—

"(i) in the case of a defined benefit plan, except as provided under paragraph (3), the annual benefit commencing at normal retirement age to which he would be entitled under the plan as in effect on such date if he continued to earn annually until normal retirement age the same rate of compensation upon which his benefits would be computed under the plan, determined as if he had attained normal retirement age on the applicable date, multiplied by a fraction, the numerator of which is the total number of his years of active participation in the plan (including, to the extent provided in regulations prescribed by the Secretary or his delegate, a predecessor plan) as of such date, and the denominator of which is the total number of years he would have actively participated in such plan as of normal retirement age if he had continued to be an active participant in the plan until attaining such age, or

"(ii) in the case of a plan other than a defined benefit plan, the balance of the account or accounts for such employee as of that date.

"(B) LIMITATION.—The numerator of the

fraction referred to in subparagraph (A)(i) shall not exceed the denominator.

"(C) DEFINED BENEFIT PLANS GENERALLY.—In the case of a defined benefit plan which permits voluntary employee contributions, the portion of an employee's accrued benefit derived from such contributions shall be treated as an accrued benefit derived from employee contributions under a plan other than a defined benefit plan.

"(D) CERTAIN INSURED DEFINED BENEFIT PLANS.—In the case of a defined benefit plan which is funded exclusively by the purchase of individual insurance contracts, an employee's accrued benefit at any date shall be equal to the benefit which might be purchased by the cash surrender value of the policy on the applicable date. An employee's accrued benefit under such a plan shall not be determined under this subparagraph unless the plan satisfies the requirements of paragraphs (1) through (6) of section 4971(e) (relating to certain insured plans).

"(E) VARIABLE ANNUITY PLANS.—In the case of a variable annuity plan, an employee's accrued benefit at any date shall be determined in ac-

cordance with regulations prescribed by the Secretary or his delegate.

"(2) ALLOCATION OF ACCRUED BENEFIT BETWEEN EMPLOYER AND EMPLOYEE CONTRIBUTIONS.—For purposes of this section, an employee's accrued benefit derived from employer contributions as of any applicable date is the excess of the accrued benefit determined under paragraph (1) for such employee as of such applicable date over the amount of the accrued benefit derived from contributions made by such employee as of such date. In the case of a plan other than a defined benefit plan, the amount of accrued benefit derived from contributions made by an employee is the balance of the employee's separate account consisting only of his contributions and the income, expenses, gains, and losses attributable thereto or, if a separate account is not maintained with respect to an employee's contributions under such a plan, is an amount which bears the same ratio to his total accrued benefits as the total amount of the employee's contributions (less withdrawals) bears to the sum of such contributions (less withdrawals) and the contributions made on his behalf by the employer (less withdrawals). In the case of a defined benefit plan providing an annual benefit in the form of a single life annuity commencing at normal retirement age without

ancillary benefits, the amount of the accrued benefit derived from contributions made by an employee as of any applicable date is the annual benefit equal to the employee's accumulated contributions multiplied by the appropriate conversion factor. For purposes of the preceding sentence, the term 'appropriate conversion factor' means the factor necessary to convert an amount equal to the accumulated contributions to a single life annuity commencing at normal retirement age and shall be 10 percent for a normal retirement age of 65 years. For other normal retirement ages the conversion factor shall be determined in accordance with regulations prescribed by the Secretary or his delegate. For purposes of this paragraph, the term 'accumulated contributions' means the total of—

"(A) all mandatory contributions made by the employee,

"(B) interest (if any) under the plan to the end of the last plan year to which subsection (a)(2) does not apply (by reason of the applicable effective date), and

"(C) interest on the sum of the amounts determined under subparagraphs (A) and (B) compounded annually at the rate of 5 percent per annum from the beginning of the first plan year to

which subsection (a)(2) applies (by reason of the applicable effective date) to the date upon which the employee would attain normal retirement age. The accrued benefits derived from contributions made by an employee shall not exceed the accrued benefits determined under paragraph (1). The Secretary or his delegate is authorized to adjust by regulation the conversion factor, the rate of interest described in subparagraph (C), or both, from time to time as he may deem necessary. The rate of interest shall bear the relationship to 5 percent which the Secretary or his delegate determines to be comparable to the relationship which the long-term money rates and investment yields for the last 10 calendar year period ending at least 12 months prior to the beginning of the plan year bear to the long-term money rates and investment yields for the 10 calendar year period 1964 through 1973. No such adjustment shall be effective for a plan year beginning before the expiration of 1 year after such adjustment is determined and published. For purposes of this paragraph, the term 'mandatory contributions' means amounts actually contributed to the plan by the employee which are required as a condition of employment, as a condition of participation in such plan, or as a condition of

obtaining benefits under the plan attributable to employer contributions.

"(3) For purposes of this section, in the case of any defined benefit plan, if an employee's accrued benefit is to be determined as an amount other than an annual benefit commencing at normal retirement age, or if the amount of accrued benefit derived from contributions made by an employee is to be determined with respect to a benefit other than an annual benefit in the form of a single life annuity commencing at normal retirement age without ancillary benefits, the employee's accrued benefit, or the amount of accrued benefit derived from contributions made by an employee, as the case may be, shall be the actuarial equivalent of such benefit or amount determined under paragraph (1) or (2).

"(c) SPECIAL RULES.—

"(1) PROHIBITED DISCRIMINATION.—Subsection (a) shall not apply to benefits which may not be provided for designated employees in the event of early termination of the plan under provisions adopted to preclude discrimination prohibited by section 401(a)(4).

"(2) CLASS YEAR PLANS.—The requirements of subsection (a)(2) shall be deemed to be satisfied in the case of a class year plan if such plan provides that 100

percent of each employee's rights to or derived from the contributions of the employer on his behalf with respect to any plan year are nonforfeitable not later than the end of the fifth plan year following the plan year for which such contributions were made (within the meaning of section 404(a)(6)). For purposes of this section, the term 'class year plan' means a profit-sharing or stock bonus plan which provides for the separate nonforfeitability of employees rights to or derived from the contributions of each plan year.

"(3) VOLUNTARY WITHDRAWALS FROM CERTAIN PLANS.—A trust which is a part of a plan to which employees make mandatory contributions (within the meaning of subsection (b)(2)) shall not be disqualified under this section merely because an employee's rights to his accrued benefit derived from employer contributions under the plan (or employer contributions for a particular plan year, in the case of a class year plan) are forfeitable if, by reason of his separation from the service or termination of his active participation in the plan, he voluntarily withdraws all or part of the mandatory contributions made by him (or all or a part of the mandatory contributions made by him for that particular plan year. in the case of a class year plan).

"(4) Termination or partial termination.— Notwithstanding the provisions of subsection (a); a trust shall not constitute a qualified trust under section 401(a) unless the plan of which such trust is a part provides that, upon its termination or partial termination, the rights of all employees to benefits accrued to the date of such termination or partial termination, to the extent then funded, or the amounts credited to the employees' accounts, are nonforfeitable. This paragraph shall not apply to benefits or contributions which, under provisions of the plan adopted to preclude the discrimination prohibited by section 401(a)(4), may not be used for designated employees in the event of early termination of the plan.

"(5) Discrimination.—A plan shall not be deemed to have satisfied the requirements of section 401(a)(4) merely because it satisfies the requirements of this section.

"(d) Recordkeeping Requirements.—

"(1) Single employer plan.—Except as provided by paragraph (2), every employer shall, in accordance with regulations prescribed by the Secretary or his delegate, maintain records with respect to each of his employees sufficient to determine the benefits due or which may become due to such employees.

"(2) MORE THAN ONE EMPLOYER.—If more than one employer adopts a plan, each such employer shall, in accordance with regulations prescribed by the Secretary or his delegate, furnish to the plan administrator (within the meaning of section 3(15) of the Welfare and Pension Plans Disclosure Act) the information necessary for the administrator to maintain the records required by paragraph (1). Such administrator shall maintain the records required by paragraph (1).

"(e) CROSS REFERENCES.—

"For penalty for failure to meet requirements of subsection (a)(2)(A), see section 4973.

"For penalty for failure to furnish the information or maintain the records required under this section, see section 6690.".

(b) PENALTY FOR FAILURE TO FURNISH INFORMATION.—Subchapter B of chapter 68 (relating to assessable penalties) is amended by adding at the end thereof the following new section:

"SEC. 6690. FAILURE TO FURNISH INFORMATION OR MAINTAIN RECORDS.

"(a) CIVIL PENALTY.—If any person who is required, under section 411, to furnish information or maintain records for an employee fails to comply with such requirement he shall pay a penalty of $10 for each employee with respect to whom such failure occurs, unless it is shown that such failure is due to reasonable cause.

"(b) Deficiency Procedures Not To Apply.—Subchapter B of chapter 63 (relating to deficiency procedures for income, estate, gift, and certain excise taxes) shall not apply to the assessment or collection of any penalty imposed by subsection (a).".

(c) Comparability of Plans.—Section 401(a) (relating to qualified pension, etc., plans) is amended by adding at the end of paragraph (5) the following: "For purposes of determining whether two or more plans of an employer satisfy the requirements of paragraph (4) when considered as a single plan, if the amount of contributions on behalf of the employees allowed as a deduction under section 404 for the taxable year with respect to such plans, taken together, bears a uniform relationship to the total compensation, or the basic or regular rate of compensation, of such employees, the plans shall not be considered discriminatory merely because the rights of employees to, or derived from, the employer contributions under the separate plans do not become nonforfeitable at the same rate. For purposes of determining whether two or more plans of an employer satisfy the requirements of paragraph (4) when considered as a single plan, if the employees' rights to benefits under the separate plans do not become nonforfeitable at the same rate, but the levels of benefits provided by the separate plans satisfy the requirements of regulations prescribed by the Secretary or his dele-

gate to take account of the differences in such rates, the plans shall not be considered not to satisfy the requirements of paragraph (4) merely because of the differences in such rates.".

(d) Conforming Amendment.—Paragraph (7) of section 401(a) (relating to requirements for qualification) is amended to read as follows:

"(7) A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part meets the requirements of section 411 (relating to vesting).".

(e) Clerical Amendments.—

(1) The table of sections for subpart B of part I of subchapter D of chapter 1, as added by section 201, is amended by inserting at the end thereof the following new item:

"Sec. 411. Minimum standards relating to vesting.".

(2) The table of sections for subchapter B of chapter 68 is amended—

(A) by striking out the item relating to the section captioned "Assessable penalties with respect to information required to be furnished under section 7654" and inserting in lieu thereof:

"Sec. 6688. Assessable penalties with respect to information required to be furnished under section 7654.",

and

(B) by inserting at the end thereof the following new item:

"Sec. 6690. Failure to furnish information or maintain records.".

(3) Subchapter B of chapter 68 is amended by striking out the heading of the section immediately preceding section 6689 and inserting in lieu thereof:

"SEC. 6688. ASSESSABLE PENALTIES WITH RESPECT TO INFORMATION REQUIRED TO BE FURNISHED UNDER SECTION 7654.".

(f) EFFECTIVE DATES.—

(1) Except as provided in paragraphs (2), (3), and (4), the amendments made by this section shall apply to plan years beginning after the date of enactment of this Act.

(2) In the case of a plan (other than a plan described in paragraph (3)) in existence on the date of enactment of this Act, the amendments made by this section shall apply to plan years beginning after December 31, 1975; however, if the Secretary of Labor determines that the application of any or all of such amendments to a plan for those plan years would create substantial economic hardship for that plan and certifies his determination to the Secretary of the Treasury before that date, the amendments made by this section with

respect to which the Secretary of Labor makes such determination shall apply only to plan years of that plan beginning after December 31 of a year not later than 1981 determined by the Secretary of Labor and certified to the administrator of the plan and to the Secretary of the Treasury. For purposes of this paragraph the term "substantial economic hardship" includes, but is not limited to, a finding by the Secretary that—

(A) there is a substantial risk that, if such amendment or amendments apply to the plan without any extension, the voluntary continuation of the plan will be unlikely;

(B) the plan will be unable to discharge its contractual obligations for the payment of benefits; or

(C) application of the amendments to the plan without an extension is likely to cause a substantial reduction in the number of plan participants or persons employed by the employer or employers contributing to or under the plan.

Benefits under a plan may not be increased by amendment if an extension under this paragraph is in effect with respect to the plan on the effective date of amendment. If a plan is amended in violation of the provisions

of this paragraph, any such extension shall not apply to plan years beginning after the plan year in which such amendment becomes effective.

(3) The amendments made by this section shall apply to plan years beginning after December 31, 1980, in the case of a plan established and maintained by the United States or a State or political subdivision thereof, the District of Columbia, or an agency or instrumentality of the United States or of a State or a political subdivision thereof, or of the District of Columbia.

SEC. 222. CERTAIN NONQUALIFIED PLANS.

(a) GENERAL RULE.—Section 404 (relating to deduction for contributions to an employee's trust, etc.) is amended—

(1) by inserting in subsection (a)(5) "or subsection (g)," after "or 3,", and

(2) by inserting at the end thereof the following new subsection:

"(g) CERTAIN PLANS.—No deduction shall be allowed under this section for a contribution by an employer to a trust created or organized in the United States which is not a trust described in section 401(a) (or a contribution to or under a plan which does not satisfy the requirements of subsection (a)(2)) if the plan of which such trust is a part (or such plan)—

"(1) is established under a written governing instrument,

"(2) provides a determinable retirement benefit for an employee or his beneficiaries which is not required, under the plan, to be paid in full to the employee or his beneficiaries within 5 years after such benefit accrues, and

"(3) in the case of a plan of an employer which is a corporation, provides for the deferral of compensation of any employee who—

"(A) is not an officer of such corporation, and

"(B) owns (or is considered as owning (within the meaning of section 1563(e))) stock possessing less than 5 percent of the total combined voting power.".

(b) Effective Date.—The amendments made by this section shall apply for taxable years beginning after December 31, 1975.

PART C—FUNDING

SEC. 241. MINIMUM STANDARDS RELATING TO FUNDING.

(a) Excise Tax on Failure To Meet Minimum Funding Standard.—Subtitle D (relating to miscellaneous excise taxes) is amended by adding at the end thereof the following new chapter:

"CHAPTER 44—QUALIFIED PENSION, ETC., PLANS

"Sec. 4971. Minimum standards relating to funding.
"Sec. 4972. Taxes on failure to meet minimum funding standard.
"Sec. 4973. Taxes on failure to meet minimum vesting standard.

"SEC. 4971. MINIMUM STANDARDS RELATING TO FUNDING.

"(a) GENERAL RULE.—This section applies to a plan to which part I of subchapter D of chapter 1 applies, which—

"(1) has satisfied (or has been determined by the Secretary or his delegate to have satisfied) the requirements of section 404(a)(2), or

"(2) includes a trust which has qualified (or has been determined by the Secretary or his delegate to have qualified) under section 401(a).

A plan to which this section applies shall have satisfied the minimum funding standard provided by this subsection for a plan year at the end of which the plan does not have an accumlated funding deficiency. For purposes of this section and section 4972, the term 'accumulated funding deficiency' means (except in the case of a plan described in subsection (g)) the excess of the total charges to the funding standard account for all plan years over the total credits to such account for such years.

"(b) FUNDING STANDARD ACCOUNT.—

"(1) ACCOUNT REQUIRED.—Each plan to which this section applies shall establish and maintain a funding standard account. Such account shall be credited and charged solely as provided in this section.

"(2) CHARGES TO ACCOUNT.—For a plan year, the funding standard account shall be charged with the amount described in subsection (e) (if applicable), or the sum of—

"(A) the normal cost of the plan for the plan year,

"(B) the amounts necessary to amortize in not less than equal annual installments (computed on the basis of plan years)——

"(i) the initial unfunded past service liability under the plan, over a period of 30 plan years (or the period determined under subsection (d)(2)) until fully amortized,

"(ii) separately, with respect to each plan year, the net increase (if any) in unfunded past service liability under the plan arising from plan amendments adopted in such year (if as a result of such plan amendments the net unfunded past service liability under the plan for such year increases by 5 percent or more),

over a period of 30 plan years, until fully amortized.

"(iii) the net experience loss (if any) for each plan year, over the lesser of a period of 15 plan years or of a number of years equal to the average remaining service life of participants in the plan at the end of such plan year, until fully amortized, and

"(iv) separately, with respect to each plan year, the net increase (if any) in unfunded past service liability under the plan arising from plan amendments adopted in such year (other than net increases required to be amortized under clause (ii)) over the lesser of a period of 15 plan years or of a number of years equal to the average remaining service life of participants in the plan at the end of such plan year, until fully amortized, and

"(C) the amount necessary to amortize in equal payments each waived funding deficiency (within the meaning of subsection (d)) for each prior plan year over a period of 10 plan years, until fully amortized.

For purposes of subparagraph (B), in the case of a plan in existence on the effective date of this section,

the initial unfunded past service liability under the plan shall be an amount equal to the unfunded past service liability on such date.

"(3) Credits to account.—For a plan year, the funding standard account of a plan shall be credited with the sum of—

"(A) the amount considered contributed by the employer to or under the plan (within the meaning of section 404(a)(6)) for the plan year,

"(B) the amount necessary to amortize in equal payments—

"(i) the net experience gain (if any) for each plan year over the lesser of a period of 15 plan years or a number of years equal to the average remaining service life of participants in the plan at the end of such plan year, until fully amortized,

"(ii) separately, with respect to each plan year, the net decrease (if any) in unfunded past service liability under the plan arising from plan amendments adopted in such year (other than net decreases required to be amortized under clause (iii)) over the lesser of a period of 15 plan years or a number of years equal to the average remaining service life of participants

in the plan at the end of such plan year, until fully amortized,

"(iii) separately, with respect to each plan year, the net decrease (if any) in unfunded past service liability under the plan arising from plan amendments adopted in each plan year (if as a result of such plan amendments the net unfunded liability under the plan for such year decreases by more than 5 percent) over a period of 30 plan years, until fully amortized, and

"(C) the amount of the waived funding deficiency (within the meaning of subsection (d)) for the plan year.

"(4) INTEREST.—The funding standard account shall be charged or credited with interest (at the rate of interest used under the plan to determine costs) with respect to the balance of such account.

For purposes of this section, normal costs, past service liabilities, and experience gains and losses, shall be determined under the funding method used to determine costs under the plan, and the actuarial assumptions used to determine costs and liabilities under the plan must in the aggregate be reasonable.

"*(c) Definitions and Special Rules.—*

"*(1) Full funding.—If, as of the end of a plan year, a plan would have an accumulated funding deficiency (but for the application of this paragraph) in excess of the full funding limitation—*

"*(A) the funding standard account shall be credited with the amount of such excess, and*

"*(B) all amounts described in paragraphs (2) (B) and (C) and (3) (A) and (B) of subsection (b) which are required to be amortized shall be considered fully amortized for purposes of such paragraphs.*

For purposes of this paragraph, a plan shall be considered fully funded if the accrued liability (including normal cost) under the plan (determine under the funding method used by the plan to determine normal cost for such year if such liability can be directly calculated under such funding method, or determined under the entry age normal funding method if such liability cannot be so calculated under the funding method so used by the plan) is not greater than the value of the assets of the plan (determined, in accordance with regulations prescribed by the Secretary or his delegate, on the basis of average value for 5 or fewer years) on the valuation date of the plan for such year.

"(2) COMPUTATION OF NET EXPERIENCE GAINS AND LOSSES.—In computing net experience gains and losses for a plan year, the value of the assets held under a plan shall be determined (in accordance with regulations prescribed by the Secretary or his delegate) on the basis of average values for 5 or fewer years.

"(3) CHANGE IN ACTUARIAL ASSUMPTIONS, SOCIAL SECURITY, ETC., BENEFITS.—For purposes of this section, all costs liabilities, interest rates, valuations of assets, and other factors under the plan shall be determined on the basis of actuarial assumptions which in the aggregate, are reasonable, and, if a change in the funding method or actuarial assumptions used under the plan, a change in benefits under the Social Security Act or other retirement benefits created under State or Federal law, or a change in the definition of the term 'wages' under section 3121, results in an increase or decrease in accrued liability under a plan, such increase or decrease shall be treated as an experience loss or gain. If a plan changes its funding method, the new funding method shall become the funding method used to determine costs and liabilities under the plan only if the change is approved by the Secretary or his delegate. The plan year of a plan may be changed only if the change is approved by the Secretary or his delegate.

"(d) Waiver of Minimum Funding Standard.—

"(1) In general.—If an employer is unable to satisfy the minimum funding standard for a plan year without substantial business hardship, the Secretary or his delegate is authorized to waive the requirements of subsection (a) for such year with respect to all or any portion of the minimum funding standard except the portion thereof determined under subsection (b)(2)(C). The Secretary or his delegate shall not waive the minimum funding standard with respect to a plan for more than 5 of any 10 consecutive plan years. For purposes of this section, the term 'waived funding deficiency' means the portion of the minimum funding standards (determined without regard to subsection (b)(3)(C)) for a plan year waived by the Secretary or his delegate and not satisfied by employer contributions.

"(2) Multiemployer plans.—In the case of a multiemployer plan (as defined in section 401(a)(3)) of the Retirement Income Security for Employees Act—

"(A) the term '40 plan years' shall be substituted for the term '30 plan years' wherever it appears in subsection (b); and

"(B) if 10 percent or more of the number of employers contributing to or under the plan demon-

strate to the satisfaction of the Secretary of Labor that they would experience substantial economic hardship if required to contribute the amount necessary to amortize in equal payments any unfunded liability (described in clause (i) or (ii) of subsection (b)(2)B)) of such plan over a period of 40 years until fully amortized, then the 40-year period described in such clause shall be extended for the period of time (not in excess of 10 years) that is certified for this purpose by the Secretary of Labor to the Secretary of the Treasury.

"(3) LIMIT ON INCREASES IN BENEFITS WHILE WAIVER OR EXTENSION APPLIES.—Benefits under a plan may not be increased by amendment if a waiver under paragraph (1) or an extension under paragraph (2) is in effect with respect to the plan on the effective date of amendment. If a plan is amended in violation of the provisions of this paragraph, any such waiver or extension shall not apply to plan years beginning after the plan year in which such amendment becomes effective.

"(e) CERTAIN INSURED PLANS.—If—

"(1) a plan is funded exclusively by the purchase of individual insurance contracts,

"(2) such contracts provide for level annual premium payments to be paid extending not later than the retirement age for each individual participation in the plan, and commencing with the date the individual became a participant in the plan (or, in the case of an increase in benefits, commencing at the time such increase becomes effective),

"(3) benefits provided by the plan are equal to the benefits provided under each contract at normal retirement age under the plan and are guaranteed by an insurance carrier (licensed under the laws of a State to do business with the plan) to the extent premiums have been paid,

"(4) premiums payable for the plan year, and all prior plan years under such contracts have been paid before lapse or there is reinstatement of the policy,

"(5) no rights under such contracts have been subject to a security interest at any time during the plan year, and

"(6) no policy loans are outstanding during the plan year,

the amount charged to the funding standard account shall be equal to the net premiums paid under the plan.

"(f) PLANS OTHER THAN DEFINED BENEFIT PLANS.—In the case of a profit-sharing, stock bonus, or money purchase plan—

"(1) 'normal cost' shall be the amount required under the plan to be contributed for a plan year to fund the current service liability, and

"(2) the amounts required to be charged under subsection (b)(2)(B) (i), (ii), and (iv) shall be the amount required under the plan to be contributed on account of past service liability.

"(g) EXCEPTIONS.—Subsection (a) shall not apply to—

"(1) a plan established or maintained outside the United States primarily for the benefit of employees who are not citizens of the United States if the fund for such plan is maintained outside the United States,

"(2) a plan established and maintained solely for the purpose of complying with applicable workmen's compensation or unemployment compensation or disability insurance laws,

"(3) a plan established and maintained by a church or by a convention or association of churches which is exempt from tax under section 501(a) of the Internal Revenue Code of 1954,

"(4) a plan established and maintained by a fraternal society, order, or association described in section 501(c) (8) or (9) of the Internal Revenue Code of 1954 if no part of the contributions to or under such plan are made by employers of participants in such plan,

"(5) a plan established or maintained by the Government of the United States or the government of any State or political subdivision thereof, or by an agency or instrumentality thereof, or

"(6) a plan described in section 404(a)(5).

"(h) REGULATIONS.—The Secretary or his delegate is authorized to prescribe such regulations as are necessary to carry out the provisions of this section.

"SEC. 4972. TAXES ON FAILURE TO MEET MINIMUM FUNDING STANDARD.

"(a) INITIAL TAX.—For each taxable year of an employer who maintains a plan to which section 4971 applies, there is hereby imposed a tax of 5 percent on the amount of the accumulated funding deficiency under the plan, determined as of the end of the plan year ending with or within such taxable year. The tax imposed by this subsection shall be paid by the employer responsible for contributing to or under the plan the amount described in section 4971(b)(3)(A).

"(b) Additional Tax.—In any case in which an initial tax is imposed by subsection (a) on an accumulated funding deficiency and such accumulated funding deficiency is not corrected within the correction period, there is hereby imposed a tax equal to 100 percent of such accumulated funding deficiency. The tax imposed by this subsection shall be paid by the employer described in subsection (a).

"(c) Special Rule.—In the case of a multiemployer plan, see section 413(b)(6).

"(d) Definitions.—For purposes of this section—

"(1) Correct.—The term 'correct' means, with respect to an accumulated funding deficiency, the contribution, to or under the plan, of the amount necessary to reduce such accumulated funding deficiency as of the end of a plan year in which such deficiency arose to zero.

"(2) Correction period.—The term 'correction period' means, with respect to an accumulated funding deficiency, the period beginning with the end of a plan year in which there is an accumulated funding deficiency and ending 90 days after the date of mailing of a notice of deficiency with respect to the tax imposed by subsection (a) under section 6212, extended by—

"(A) any period in which a deficiency cannot be assessed under section 6213(a), and

"(B) any other period which the Secretary or his delegate determines is reasonable and necessary to permit a reduction of the accumulated funding deficiency to zero under this section.

"(e) REGULATIONS.—The Secretary or his delegate may prescribe such regulations as may be necessary to carry out the provisions of this section.

"(f) CROSS REFERENCE.—

"For disallowance of deduction for taxes paid under this section, see section 275.".

(b) AMENDMENT OF SECTION 404.—Section 404 (relating to deductions for contributions to an employees' trust, etc.) is amended by—

(1) inserting immediately after subsection (a)(1)(D) the following new sentences: "The limitations under subparagraphs (B) and (C) shall not apply with respect to the amount of a contribution made to or under a pension plan to the extent such contribution does not exceed the amount of employer contributions necessary to satisfy the minimum funding standard provided by section 4971(a) for the taxable year. For purposes of determining the amount deductible under section 162 or 212 with respect to a contribution to a pension plan and for purposes of determining the limitations under subparagraphs (B) and (C), assets held under the plan shall be valued (in accordance with regulations pre-

scribed by the Secretary or his delegate) on the basis of average values for 5 or fewer years."; and

(2) by striking out subsection (a)(7), and inserting in lieu thereof:

"(7) LIMIT OF DEDUCTIONS.—If amounts are deductible under paragraphs (1) and (3), or (2) and (3), or (1), (2), and (3), in connection with two or more trusts, or one or more trusts and an annuity plan, the total amount deductible in a taxable year under such trusts and plans shall not exceed the greater of 25 percent of the compensation otherwise paid or accrued during the taxable year to the persons who are the beneficiaries of the trusts or plans, or the amount of contributions made to or under the trusts or plans to the extent such contributions do not exceed the amount of employer contributions necessary to satisfy the minimum funding standard provided by section 4971 for the plan year which ends with or within such taxable year. In addition, any amount paid into such trust or under such annuity plans in any taxable year in excess of the amount allowable with respect to such year under the preceding provisions of this paragraph shall be deductible in the succeeding taxable years in order of time, but the amount so deductible under this sentence in any one such succeeding taxable year together with the

amount allowable under the first sentence of this paragraph shall not exceed the greater of 30 percent of the compensation otherwise paid or accrued during such taxable year to the beneficiaries to or under the trusts or plans to the extent such contributions do not exceed the minimum funding standard provided by section 4971 for the plan year which ends with or within such taxable year. This paragraph shall not have the effect of reducing the amount otherwise deductible under paragraphs (1), (2), and (3), if no employee is a beneficiary under more than one trust or a trust and an annuity plan.

"SEC. 4973. TAXES ON FAILURE TO MEET MINIMUM VESTING STANDARD.

"(a) INITIAL TAX.—For each taxable year of an employer who maintains a plan to which section 411 applies there is hereby imposed a tax of 5 percent on the amount of the accumulated vesting deficiency under the plan, determined as of the end of the plan year ending with or within such taxable year. The tax imposed by this subsection shall be paid by the employer who maintains the plan.

"(b) ADDITIONAL TAX.—In any case in which a tax is imposed by subsection (a) on an accumulated vesting deficiency and such accumulated vesting deficiency is not corrected within the correction period, there is hereby imposed a tax equal to 100 percent of such accumulated vest-

ing deficiency. The tax imposed by this subsection shall be paid by the employer described in subsection (a).

"(c) DEFINITIONS.—For purposes of this section—

"(1) ACCUMULATED VESTING DEFICIENCY.—The term 'accumulated vesting deficiency' means an amount equal to the actuarially equivalent value of all benefits under a plan derived from employer contributions which are required by section 411(a)(2)(A) to be nonforfeitable as of the end of a plan year, reduced by an amount equal to the actuarially equivalent value of all such benefits which are, in fact, nonforfeitable under that plan as of the close of that plan year.

"(2) CORRECT.—The term 'correct' means, with respect to an accumulated vesting deficiency, the crediting under the plan of the amount necessary to reduce such accumulated vesting deficiency to zero as of the end of a plan year in which such deficiency arose.

"(3) CORRECTION PERIOD.—The term 'correction period' means, with respect to an accumulated vesting deficiency, the period beginning with the end of a plan year in which there is an accumulated vesting deficiency and ending 90 days after the date of mailing of a notice of deficiency with respect to the tax imposed by subsection (a) under section 6212, extended by—

"(A) any period in which a deficiency cannot be assessed under section 6213(a), and

"(B) any other period which the Secretary or his delegate determines is reasonable and necessary to permit a reduction of the accumulated vesting deficiency to zero under this section.

"(d) Regulations.—The Secretary or his delegate may prescribe such regulations as may be necessary to carry out the provisions of this section.

"(e) Cross Reference.—

"For disallowence of deduction for taxes paid under this section, see section 275.".

(c) Conforming, Clerical, Etc., Amendments.—

(1) The table of chapters for subtitle D is amended by adding at the end thereof the following new item:

"Chapter 44. Qualified pension plans.".

(2) Section 6161 (relating to extensions of time for paying tax) is amended by striking out "or 42" each place it appears in subsection (b) and inserting in lieu thereof ", 42 or 44".

(3) Section 6201(d) (relating to assessment authority) is amended by striking out "chapter 42" and inserting in lieu thereof "chapter 42 or 44".

(4) Section 6211 (relating to definition of a deficiency) is amended by—

(A) striking out so much of subsection (a) as precedes "(1) the sum of" and inserting in lieu thereof the following:

"(a) In General.—For purposes of this title in the case of income, estate, and gift taxes imposed by subtitles A and B and excise taxes imposed by chapters 42 and 44 the term 'deficiency' means the amount by which the tax imposed by subtitle A or B, or chapter 42 or 44, exceeds the excess of—"; and

(B) striking out "chapter 42" in subsection (b)(2) and inserting in lieu thereof "chapter 42 or 44".

(5) Section 6212 (relating to notice of deficiency) is amended—

(A) by striking out "or chapter 42" in subsections (a) and (b) and inserting in lieu thereof "chapter 42, or chapter 44",

(B) by striking out "chapter 42, and this chapter" in subsection (b), and inserting in lieu thereof "chapter 42, chapter 44, and this chapter", and

(C) by striking out "chapter 42 tax" in subsection (c) and inserting in lieu thereof "chapter 42 or 44 tax".

(6) Section 6213 (relating to restrictions appli-

cable to deficiencies and petition to Tax Court) is amended—

(A) by striking out "or chapter 42" in subsection (a) and inserting in lieu thereof ", chapter 42 or chapter 44",

(B) by striking out the heading in subsection (e) and inserting in lieu thereof "Suspension of Filing Period for Certain Chapter 42 or 44 Taxes.—"; by striking out "or 4945 (relating to taxes on taxable expenditures)" in subsection (e) and inserting in lieu thereof "4945 (relating to taxes on taxable expenditures), 4972 (relating to taxes on failure to meet maximum funding standard), section 4974 (relating to excise tax on prohibited transactions)"; and by striking out "or 4945(h)(2)" in subsection (e) and inserting in lieu thereof ", 4945(h)(2), 4972(d)(2), or 4974(f)(4)".

(7) Section 6214(c) (relating to determinations by Tax Court) is amended—

(A) by striking out the heading and inserting in lieu thereof "Taxes Imposed by Section 507, Chapter 42, or Chapter 44.——",

(B) by striking out "chapter 42" each place it appears therein and inserting in lieu thereof "chapter 42 or 44"; and

(C) by striking out "chapter 42" in subsection (d) and inserting in lieu thereof "chapter 42, chapter 44".

(8) Section 6344(a)(1) (relating to cross references) is amended by striking out "chapter 42" and inserting in lieu thereof "chapter 42 or 44".

(9) Section 6501(e)(3) (relating to limitations on assessment and collection) is amended by striking out "chapter 42" and inserting in lieu thereof "chapter 42 or 44".

(10) Section 6503 (relating to suspension of running of period of limitations) is amended—

(A) by striking out "and chapter 42 taxes)" in subsection (a)(1) and inserting in lieu thereof "chapter 42 or 44 taxes)", and

(B) by striking out "or section 507" in subsection (h) and inserting in lieu thereof ", section 507, or chapter 44", and by striking out "or 4945(h)(2)" in subsection (h) and inserting in lieu thereof "4945(i)(2), 4972(d)(2), or 4974(f)(4)".

(11) Section 6512 (relating to limitations in case of petition to Tax Court) is amended by striking out "chapter 42" each place it appears therein and inserting in lieu thereof "chapter 42 or 44".

(12) Section 6601(d) (relating to interest on underpayment, nonpayment, or extensions of time for payment of tax) is amended by—

(A) striking out "chapter 42" and inserting in lieu thereof "chapter 42 or 44", and

(B) striking out in the heading thereof "Chapter 42" and inserting in lieu thereof "Chapter 42 or 44".

(13) Section 6653(c)(1) (relating to income, estate, gift, and chapter 42 taxes) is amended by striking out "chapter 42" each place it appears therein (including the caption) and inserting in lieu thereof "chapter 42 or 44".

(14) Section 6659(b) (relating to applicable rules) is amended by striking out "chapter 42" and inserting in lieu thereof "chapter 42 or 44".

(15) Section 6676(b) (relating to failure to supply identifying numbers) is amended by striking out "chapter 42" and inserting in lieu thereof "chapter 42 or 44".

(16) Section 6677(b) (relating to failure to file information returns with respect to certain foreign trusts) is amended by striking out "chapter 42" and inserting in lieu thereof "chapter 42 or 44".

(17) Section 6679(b) (relating to failure to file returns as to organization or reorganization of foreign corporations and as to acquisitions of their stock) is amended by striking out "chapter 42" and inserting in lieu thereof "chapter 42 or 44".

(18) Section 6682(b) (relating to false information with respect to withholding allowances based on itemized deductions) is amended by striking out "and chapter 42" and inserting in lieu thereof "chapter 42, and chapter 44".

*(19) Section 6861 (relating to jeopardy assessments of income, estate, and gift taxes) is amended by striking out "**AND GIFT TAXES.**", and inserting in lieu thereof "**GIFT, AND CERTAIN EXCISE TAXES.**"*

(20) Section 6862 (relating to jeopardy assessment of taxes other than income, estate, and gift taxes) is amended—

*(A) by striking out "**AND GIFT TAXES.**", and inserting in lieu thereof "**GIFT, AND CERTAIN EXCISE TAXES.**",*

(B) by striking out "and gift tax)" and inserting in lieu thereof "gift tax, chapter 42 tax, and chapter 44 tax)".

(21) Section 7422 (relating to civil actions for refund) is amended—

(A) by striking out "chapter 42" and inserting in lieu thereof "chapter 42 or 44" in subsection (e), and

(B) by striking out "chapter 42" in the heading of subsection (g) and inserting in lieu thereof "chapter 42 or 44", and

(C) by striking out "or 4945" in subsection (g)(1) and inserting in lieu thereof "4945, 4972, 4973, or 4974", and

(D) by striking out "section 4945(a) (relating to initial taxes on taxable expenditures)" in subsection (g)(1) and inserting in lieu thereof "section 4945(a) (relating to initial taxes on taxable expenditures), 4972(a) (relating to initial tax on failure to meet minimum funding standard), 4973(a) (relating to initial tax on failure to meet minimum vesting standard), 4974(a) (relating to initial tax on prohibited transactions)", and

(E) by striking out "or 4945" in paragraphs (2) and (3) and inserting in lieu thereof "4945, 4972, 4973, 4974, or 4975".

(F) by striking out "or section 4945(b) (relating to additional taxes on taxable expenditures)" in subsection (g)(1) and inserting in lieu thereof "section 4945(b) (relating to additional taxes on

taxable expenditures), section 4972(b) (relating to additional tax on failure to meet minimum funding standard), section 4973(b) (relating to additional taxes on failure to meet minimum vesting standard), or section 4974(b) (relating to additional tax on prohibited transactions)", and

(G) by striking out "or 4945" in subsections (g) (2) and (3) and inserting in lieu thereof "4945, 4972, 4973, or 4974".

(22) Section 275(a) (relating to certain taxes) is amended by inserting immediately following paragraph (5) the following new paragraph:

"(6) Taxes imposed by chapter 42 and chapter 44 (except section 4975 thereof)."

(d) EFFECTIVE DATE.—

(1) Except as provided in paragraph (2), the amendments made by this section shall apply to plan years beginning after the date of enactment of this Act.

(2) In the case of a plan in existence on the date of enactment of this Act, the amendments made by this section shall apply to plan years beginning after December 31, 1975; however, if the Secretary of Labor determines that the application of any or all of such amendments to a plan for those plan years would create substantial economic hardship for that plan and certifies

his determination to the Secretary of the Treasury before that date, the amendments made by this section with respect to which the Secretary of Labor makes such determination shall apply only to plan years of that plan beginning after December 31 of a year not later than 1981 determined by the Secretary of Labor and certified to the administrator of the plan and to the Secretary of the Treasury. For purposes of this paragraph the term "substantial economic hardship" includes, but is not limited to, a finding by the Secretary that—

(A) there is a substantial risk that, if such amendment or amendments apply to the plan without any extension, the voluntary continuation of the plan will be unlikely;

(B) the plan will be unable to discharge its contractual obligations for the payment of benefits; or

(C) application of the amendments to the plan without an extension is likely to cause a substantial reduction in the number of plan participants or persons employed by the employer or employers contributing to or under the plan.

Benefits under a plan may not be increased by amendment if an extension under this paragraph is in effect with respect to the plan on the effective date of amend-

ment. If a plan is amended in violation of the provisions of this paragraph, any such extension shall not apply to plan years beginning after the plan year in which such amendment becomes effective.

PART D—OPTIONAL FORM OF BENEFIT; SPECIAL RULES

SEC. 261. AMENDMENT OF SECTION 401.

(a) IN GENERAL.—Section 401(a) (relating to requirements for qualification) is amended by—

(1) striking out paragraph (4) and inserting in lieu thereof the following:

"(4) if the contributions or benefits provided under the plan do not discriminate in favor of employees who are—

"(A) officers,

"(B) shareholders, or

"(C) highly compensated,

excluding for this purpose employees who are nonresident aliens whose compensatioon from the employer (for the taxable year of the employer) does not include any earned income (within the meaning of section 911(b)) from sources within the United States (within the meaning of section 861(a)(3)).", and

(2) by inserting at the end thereof the following new paragraphs:

"(11) A trust shall not constitute a qualified trust under this section if the plan of which such trust is a part provides for the payment of benefits in the form of an annuity for the life of a participant unless such plan provides for the payment of such benefit in the form of a joint and survivor annuity (with a survivor annuity of not less than one half of the amount of the annuity payable to the participant during the joint lives of the participant and his spouse), unless the participant elects in writing, within 2 years of normal retirement age (or, if earlier, within 2 years of the first payment of regular retirement benefits), not to have the benefit paid in such form and that such election may be made only after such participant receives a written explanation of the terms and conditions of such joint and survivor annuity and the effect of such election.

"(12) A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that benefits provided under the plan may not be assigned or alienated unless the beneficiary thereof cannot be located or ascertained within such reasonable period of time as the Secretary or his delegate may prescribe by regulation.".

(b) PLANS BENEFITING OWNER-EMPLOYEES.—Section 401(d)(3) (relating to additional requirements for

qualification of trusts and plans benefiting owner-employees) is amended by striking out "calendar year." and inserting in lieu thereof: "calendar, fiscal, or plan year, or any employees who are included in a unit of employees covered by an agreement which the Secretary or his delegate finds to be a collective-bargaining agreement between employee representatives and one or more employers, if such agreement does not provide that such employees are to be included in the plan, and if there is evidence that retirement benefits were the subject of good faith bargaining between such employee representatives and such employer or employers during the most recently concluded contract negotiations which were the subject of bargaining between such representatives and the employer or employers.".

(c) CONFORMING AMENDMENTS.—

(1) Section 404(a)(2) (relating to deduction for contributions of an employer to employees' annuity plan) is amended by striking out "and (8)," and inserting in lieu thereof "(8), (11), (12), (13), (14), and (15),".

(2) Section 805 (d)(1)(C) (relating to definition of pension plan reserves) is amended by striking out "and (8)" and inserting in lieu thereof "(8), (11), (12), (13), (14), and (15)".

(d) Effective Dates.—

(1) General rule.—Except as provided by paragraph (2), the amendments made by this section shall apply with respect to plan years and taxable years beginning after the date of enactment of this Act.

(2) Exception.—In the case of a trust which is part of a plan which was in existence on December 31, 1972, the amendments made by this section shall not apply with respect to plan years beginning before January 1, 1976.

SEC. 262. PROHIBITION AGAINST MAINTAINING NON-QUALIFIED PLANS.

(a) In General.—Except as otherwise provided in this section, no person engaged in a trade or business which is in or affects interstate commerce shall establish or maintain a retirement plan which does not meet the requirements of section 401 of the Internal Revenue Code of 1954 (other than a plan described in section 404(a)(5) of such Code to which section 404(g) of such Code does not apply).

(b) Enforcement.—The Secretary of the Treasury is authorized to bring an action in any district court of the United States having jurisdiction over a person who establishes or maintains a retirement plan in violation of the provisions of subsection (a) against such person for equitable relief to restrain that person from maintaining such a plan.

(c) Exceptions.—Subsection (a) shall not apply to—

(1) a plan established or maintained outside the United States primarily for the benefit of employees who are not citizens of the United States if the fund for such plan is maintained outside the United States,

(2) a plan established and maintained solely for the purpose of complying with applicable workmen's compensation or unemployment compensation or disability insurance laws,

(3) a plan established and maintained by a church or by a convention or association of churches which is exempt from tax under section 501(a) of the Internal Revenue Code of 1954,

(4) a plan established and maintained by a fraternal society, order, or association described in section 501(c) (8) or (9) of the Internal Revenue Code of 1954 if no part of the contributions to or under such plan are made by employers of participants in such plan,

(5) a plan established or maintained by the Government of the United States or the government of any State or political subdivision thereof, or by an agency or instrumentality thereof, or

(6) a plan described in section 404(a)(5) of such Code to which section 404(g) of such Code does not apply.

(d) DEFINITIONS.—*For purposes of this section, the term—*

(1) "retirement plan" means any plan, fund, or program other than a profit-sharing plan, which is established under a written governing instrument and provides a determinable retirement benefit for a participant in the plan or his beneficiaries; and

(2) "profit-sharing plan" means a retirement plan established or maintained by an employer to provide for the participation by his employees in the current or accumulated profits of the employer in accordance with a formula for allocating contributions made to the plan by participants in the plan and for distributing benefits under the plan upon retirement or death of any participant.

(e) REGULATIONS.—*The Secretary of the Treasury shall prescribe regulations as may be necessary to carry out the provisions of this section.*

PART E—PROTECTION OF PENSION RIGHTS UNDER GOVERNMENT PLANS AND CONTRACTS

SEC. 281. DUTIES OF THE SECRETARY OF THE TREASURY.

The Secretary of the Treasury or his delegate shall study the extent to which pension plans established and maintained by the Government of the United States, or by any

State (including the District of Columbia) or political subdivision thereof, are adequately funded. In determining whether any such plan is adequately funded, the Secretary or his delegate shall consider the minimum funding standards applicable to private pension plans under the Internal Revenue Code of 1954, the taxing power of the government maintaining the plan, and whether it would be advisable or appropriate to require such plans to comply with the same minimum funding standards applicable to private pension plans or with other minimum funding standards. The Secretary shall submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives the results of such study not later than December 31, 1976, together with such recommendations, including recommendations for legislation, as he may deem appropriate.

SEC. 282. DUTIES OF SECRETARY OF LABOR.

(a) DEVELOPMENT OF REGULATIONS.—The Secretary of Labor shall develop, in consultation with appropriate professional societies, business organizations, and heads of interested Federal departments and procurement agencies, recommendations for modifications of Federal procurement regulations to insure that professional, scientific, and technical personnel and others working in associated

occupations employed under Federal procurement, construction, or research contracts or grants shall, to the extent feasible, be protected against forfeitures of pension or retirement rights or benefits, otherwise provided, as a consequence of job transfers or loss of employment resulting from terminations or modifications of Federal contracts, grants, or procurement policies.

(b) PUBLICATION.—Recommended changes in regulations governing Federal contracts, grants, or procurement policies shall be developed by the Secretary, as required by subsection (a), within six months after enactment of this Act, and shall be published in the Federal Register within fifteen days thereafter as proposed regulations subject to comment by interested parties.

(c) RECOMMENDATIONS.—After publication under subsection (b), receipt of comments, and such modification of the published proposals as the Secretary deems appropriate, the recommended changes in procurement regulations developed under this title shall be adopted by each Federal department and procurement agency within sixty days thereafter unless the head of such department or agency determines that such changes would not be in the national interest or would not be consistent with the primary objectives of such department or agency.

TITLE III—PORTABILITY

SEC. 301. DEFINITIONS.

For purposes of this title—

(1) "fund" means the Pension Benefit Portability Fund established under section 303;

(2) "corporation" means the Pension Benefit Guaranty Corporation established under title IV of this Act;

(3) "qualified plan" means—

(A) a pension, profit-sharing, or stock bonus plan described in section 401(a) of the Internal Revenue Code of 1954,

(B) an annuity plan described in section 403 (a) or (b) of such Code, and

(C) a bond purchase plan described in section 405(a) of such Code;

(4) "qualified insurance carrier" means an insurance carrier subject to regulation and examination by the government of the State in which an annuitant resides, which is determined by the corporation to be suitable as the issuer of annuity contracts authorized to be purchased under section 307(b)(3);

(5) "participant" means an employee who is covered under a qualified plan other than an employee who, at any time, has been an employee within the

meaning of section 401(c)(1) of the Internal Revenue Code of 1954;

(6) "administrator" means the person or persons described in section 3(15) of the Welfare and Pension Plans Disclosure Act; and

(7) "State" means any of the States of the United States or the District of Columbia.

SEC. 302. PROGRAM ESTABLISHED.

The corporation shall establish a voluntary pension benefit portability program in accordance with the provisions of this title.

SEC. 303. ESTABLISHMENT OF FUND.

(a) IN GENERAL.—The corporation shall establish a Pension Benefit Portability Fund. Any payments received by the corporation under this section or under section 305 shall be deposited in the fund, and all expenditures made by the corporation under, or in connection with, this title shall be made out of the fund.

(b) INVESTMENT OF FUND MONEYS.—The corporation is authorized to invest any amounts in the fund during any fiscal year which it determines not to be needed for use in the program for the payment of liabilities during that year, and any amounts in the fund not needed for the payment of current operating and administrative expenses, in obligations of the United States, and to deposit any such

amounts in interest-bearing accounts in, or purchase certificates of deposit from, any bank the deposits of which are insured by the Federal Deposit Insurance Corporation, and to deposit any such amounts in interest-bearing accounts in any savings and loan association in which the accounts are insured by the Federal Savings and Loan Insurance Corporation or in any credit union insured under title II of the Federal Credit Union Act. In no case shall more than 10 percent of the amount invested under this subsection be invested in or with any particular bank, savings and loan association, or credit union.

(c) Reports on Status of Fund.—The corporation shall report to the Congress not later than the first day of the fourth month beginning after the end of the fiscal year of the corporation on the operations and status of the fund during that fiscal year, and on its expected operations and status during the fiscal year of the corporation during which such report is made and the two succeeding fiscal years. The report shall also contain a review of the general policies followed by the corporation in managing the fund and may contain recommendations, including recommendations for additional legislation, with respect to the operations of the fund and of the portability program established by this title, which the corporation chooses to make.

SEC. 304. REGISTRATION.

(a) In General.—If an employer who maintains a qualified plan wishes to be able to make payments from his qualified plan assets on behalf of former employees to the corporation for deposit in the fund, or to be able to receive payments from the corporation for the purchase of benefits under his qualified plan for his employees, he shall register the plan with the corporation. The registration shall be in such form and contain such information as the corporation may require. The corporation may not accept any registration application which does not contain the employer's agreement, the breach of which is subject to such charge as the corporation may by law impose, to pay to the corporation, within 180 days after the date on which it is requested, the amount payable under section 305 with respect to a participant in the registered qualified plan who is covered by such registration who requests such payment if that participant was employed by the employer at any time within a period of not less than 12 months preceding the date of the request.

(b) Termination of Registration; Reregistration.—An employer may terminate the registration of his plan under this section and reregister from time to time: however, if the corporation determines that a requested termination of registration and a subsequent registration by an employer were for the purpose of discriminating against

an employee or group of employees in an unlawful manner or in a manner prohibited to qualified plans under section 401(a) (3) or (4) of the Internal Revenue Code of 1954 or for the purpose of frustrating the purpose of this title, that termination of registration will be treated as not having been effective.

(c) Limited Registration.—An employer may register a qualified plan under this section with respect to less than all of his employees who are participants in that qualified plan if the group of employees with respect to whom he registers the plan is reasonably defined and the employer demonstrates to the satisfaction of the corporation that the group has a particular need for access to the voluntary pension benefit portability program which is not shared by his other employees who are excluded from the registration but who are participants in the same qualified plan.

SEC. 305. ACCEPTANCE OF DEPOSITS.

(a) Payments by Administrators.—The corporation shall accept for deposit into the fund any payment made from the assets of a registered qualified plan by the administrator of that plan at the request of a participant if the payment represents a full discharge of liability by that plan to the participant and is made upon his separation from the service of the employer or employers who maintain the plan.

(b) Payments by Participants.—The corporation shall accept for deposit into the fund any payment made by a participant (or former participant) in a qualified plan if—

(1) the payment is all or not less than the taxable portion of a distribution made to the participant by the plan representing a full discharge of liability of the plan to the participant, or a partial discharge of liability which will become a full discharge after being adjusted to reflect the participant's interest in the plan at the close of the plan year, or an installment portion of such a full discharge of liability with any remainder to be paid within 12 months after the date on which the first portion of such distribution is made; and

(2) the payment is made to the corporation for deposit into the fund within 60 days after the date on which the participant (or former participant) received the distribution to which the payment relates.

For purposes of this subsection, the term "taxable portion" means that part of any distribution to which this subsection applies which is attributable to amounts other than employee contributions made by the participant.

(c) Other Conditions.—The corporation shall not accept any payment described in subsection (a) unless the payment is made directly to the corporation by the adminis-

trator of the plan, nor shall it accept any payment described in subsection (a) or (b) unless it is made in cash or its equivalent and it is accompanied by such information with respect to the plan and with respect to the payment and the participant on behalf of whom the payment is made, or who is making the payment, as the corporation may require for the efficient administration of the voluntary pension benefit portability program.

SEC. 306. INDIVIDUAL ACCOUNTS.

(a) ACCOUNT ESTABLISHED.—The corporation shall establish and maintain a separate account for each separate payment received by the corporation under section 305 of this title on behalf of each participant.

(b) ITEMS SHOWN IN ACCOUNT.—An account established under subsection (a) shall identify the participant for whom it is established and shall show—

(1) the name and address of each qualified plan which makes a payment under section 305 of this title on behalf of the participant in whose name such account is established;

(2) the portion of each such payment which constitutes the amount treated under sections 72, 402(a), and 403 of the Internal Revenue Code of 1954 as the net amount contributed by the participant;

(3) any remaining portion of each such payment; and

(4) the amount which constitutes the income attributable to such account while in the custody of the fund.

SEC. 307. PAYMENTS FROM INDIVIDUAL ACCOUNTS.

(a) GENERAL RULE.—Except as provided in subsection (b), an amount credited to the account of any participant under this title may be paid by the corporation to—

(1) such participant,

(2) his beneficiary,

(3) a qualified insurance carrier selected by such participant, or

(4) a qualified plan.

(b) LIMITATIONS.—

(1) In the case of a payment by the corporation to a participant, such payment shall be made upon the written request of such participant and in an amount—

(A) of $100 or more, or

(B) which constitutes the total amount credited to the account of such participant.

The corporation shall, upon the date a participant attains the age of 70½ years, pay to such participant the amount which constitutes the total amount credited to the account of such participant. No payment may be made to a participant who has not attained the

age of 59½ years unless that participant is disabled (within the meaning of section 72(m)(7) of the Internal Revenue Code of 1954).

(2) A payment shall be made by the corporation to the beneficiary of a participant only if—

(A) the participant dies before the total amount credited to his account has been paid or distributed in accordance with paragraphs (1), (3), and (4), and

(B) the payment is made to the beneficiary upon his written request and—

(i) is in an amount of $100 or more,

(ii) constitutes the total amount credited to the account of the participant (if less than $100), or

(iii) is used to purchase an immediate annuity for such beneficiary which is payable for his life or for a term certain not extending beyond the life expectancy of the beneficiary) and which is distributed immediately to the beneficiary.

For purposes of this paragraph, the total amount credited to the account of a participant must be paid or distributed to his beneficiary not later than 10 years after the death of the participant.

(3) In the case of a payment by the corporation to a qualified insurance carrier selected by a participant who has attained the age of 59½ years, such payment shall only be made if such payment is used for the purchase of—

(A) a single premium life annuity contract payable during the life of such participant commencing not earlier than the date on which such participant attains the age of 59½ years and not later than the date on which he attains the age of 70½ years, or

(B) a single premium joint and survivor annuity contract payable during the lifetimes of such participant and his spouse commencing not earlier than the date on which such participant attains (or would have attained) the age of 59½ years and not later than the date on which such participant attains (or would have attained) the age of 70½ years,

which will be distributed to such participant on the date on which payments are to commence.

(4) The corporation shall make a payment to a qualified plan only if—

(A) the plan is registered under section 304,

(B) the payment is made pursuant to a request

made by the participant within 12 months after he becomes a participant in such plan, or, if later, within 12 months after the plan is registered under section 304, and

(C) the administrator of the plan agrees to accept the payment and to apply it to the purchase of benefits under the plan which have a value equivalent to the value of the payment if it were left in the fund.

(c) MANDATORY WITHDRAWALS.—The balance of any account of a participant shall be paid by the corporation to such participant within 30 days after notification to the corporation by the Secretary of the Treasury or his delegate that the trust or plan (which made a payment credited to such account) has been determined not to be a qualified trust under section 401(a) of the Internal Revenue Code of 1954 or not to be a plan which satisfied the requirements of section 404(a)(2) of such Code at the time such trust or plan made such payment.

SEC. 308. ASSISTANCE TO PLAN ADMINISTRATORS.

The corporation shall provide assistance to employers, employee organizations, trustees, and administrators of pension plans in their efforts to provide greater retirement protection for individuals who are separated from employment covered under such plans. Such assistance may include, but

is not limited to (1) the development of reciprocity arrangements between plans in the same industry or area, and (2) the development of special arrangements for portability of credits within a particular industry or area.

SEC. 309. AMENDMENT OF INTERNAL REVENUE CODE OF 1954.

(a) Amendment of Section 402.—Section 402 (relating to taxability of beneficiary of employees' trust) is amended by—

(1) striking out "and (4)" in the first sentence of paragraph (1) of subsection (a) and inserting in lieu thereof ", (4) and (6)",

(2) inserting after paragraph (5) of subsection (a) (as amended by section 703(b) of this Act) the following new paragraph:

"(6) Certain transfers.—For purposes of this section, a transfer of the full amount representing an employee's interest in an employee's trust described in section 401(a) which is exempt from tax under section 501(a) shall not be considered a distribution under paragraph (1) if the transfer is made in connection with a change of employment by the employee and the transfer is made from a trust under his former employer not later than the 60th day after its receipt by the employee, and within 12 months after such change of employment, to—

"(A) a trust of his new employer which is described in section 401(a) and exempt from tax under section 501(a), or

"(B) an annuity plan of his new employer which meets the requirements of section 404(a)(2).

This paragraph shall not apply to a transfer made in connection with a change of employment by an individual who was, at any time, under the former employer's plan an employee within the meaning of section 401(c)(1). This paragraph shall also apply in the case of a transfer to such a trust or annuity plan of not less than that portion of an employee's interest in his former employer's plan which does not represent the employee's own contributions if the full amount of his interest in such plan was distributed to him. For purposes of this title, the contribution made to the new employer's plan by such a transfer shall be treated as an employer contribution made on the date contributed, except that for purposes of sections 219(b)(2), 404, 411, 414(a), and 1379(b) it shall be treated as an employee contribution made on such date.", and

(3) adding at the end thereof the following new subsections:

"(f) TAXABILITY OF PAYMENTS TO THE PENSION BENEFIT PORTABILITY FUND.—A payment to the Pension

Benefit Portability Fund (established under section 303 of the Retirement Income Security for Employees Act) by a qualified plan of an amount described in section 305 of that Act on behalf of a participant shall not be includible in the gross income of such participant for the taxable year of such participant in which such payment is made.

"(g) TAXABILITY OF PAYMENTS FROM THE PENSION BENEFIT PORTABILITY FUND.—Any amount paid on behalf of a participant from the Pension Benefit Portability Fund—

"(1) to a member plan, shall not be includible in the gross income of such participant for the taxable year of such participant in which such payment is made;

"(2) to or with respect to such participant, shall be includible in gross income to the extent that such amount (when added to amounts previously received) exceeds the aggregate amount of each payment to the Pension Benefit Portability Fund credited to the account of such participant which is treated as contributed by such participant under subsection (a), or section 72 or 403;

"(3) to a qualified insurance carrier (within the meaning of section 301(4) of the Retirement Income Security for Employees Act) for the purchase of an annuity contract described in section 307(b) (2) or (3) of that Act shall not be includible in the gross income of

such participant for the taxable year in which such annuity contract is purchased.

"(h) Taxability of Mandatory Withdrawals From the Pension Benefit Portability Fund.—Any amount paid to a participant under the provisions of section 307(c) of the Retirement Income Security for Employees Act shall be includible in the gross income of such participant to the extent such amount constitutes the amount described in section 306(b)(4) of such Act."

(b) Amendment of Section 403.—Section 403(a) (relating to taxability of beneficiary under annuity plan) is amended by—

(1) striking out "paragraph (2)" in the first sentence of paragraph (1) and inserting in lieu thereof "paragraphs (2) and (4)", and

(2) inserting after paragraph (3) (as added by section 703(b) of this Act) the following new paragraph:

"(4) Certain transfers.—For purposes of this section, a transfer of the full amount representing an employee's interest in an annuity plan described in section 404(a)(2) shall not be considered a distribution under paragraph (1) if the transfer is made in connection with a change of employment by the employee and the transfer is made from a trust under his former employer not

later than the 60th day after its receipt by the employee, and within 12 months after such change of employment, to—

"(A) a trust of his new employer which is described in section 401(a) and exempt from tax under section 501(a), or

"(B) an annuity plan of his new employer which meets the requirements of section 404(a)(2).

This paragraph shall not apply to a transfer made in connection with a change of employment by an individual who was, at any time, under the former employer's plan an employee within the meaning of section 401(c)(1). This paragraph shall also apply in the case of a transfer to such a trust or annuity plan of not less than that portion of an employee's interest in his former employer's plan which does not represent the employee's own contributions if the full amount of his interest in such plan was distributed to him. For purposes of this title, the contribution made to the new employer's plan by such a transfer shall be treated as an employer contribution made on the date contributed, except that for purposes of sections 219(b)(2), 404, 411, 414(a), and 1379(b) it shall be treated as an employee contribution made on such date."

(c) Effective Date.—The amendments made by this section shall be effective on and after the date of enactment of this Act.

SEC. 310. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the corporation (which shall be treated solely for purposes of this section as an instrumentality of the United States) such sums as may be necessary to carry out the provisions of this title.

TITLE IV—PLAN TERMINATION INSURANCE

PART A—PENSION BENEFIT GUARANTY CORPORATION

SEC. 401. DEFINITIONS: SPECIAL RULES.

(a) Definitions.—For purposes of this title, the term—

(1) "administrator" means the person or persons described in section 501(g)(11) of this Act;

(2) "substantial employer" means any employer (treating employers which are members of the same affiliated group, within the meaning of section 1504(a) of the Internal Revenue Code of 1954, as one employer) who—

(A) has made contributions to or under a multiemployer plan for each of any 2 consecutive plan years equaling or exceeding 10 percent of all

employer contributions paid to or under that plan for each such year, and

(B) who has received notice from the plan administrator under section 466 and has not withdrawn from the plan within 24 months after receiving such notice;

(3) "multiemployer plan" means a plan which the corporation determines is a plan to which more than one employer (treating employers who are members of the same affiliated group within the meaning of section 1504(a) of the Internal Revenue Code of 1954 as one employer) is required to contribute and which is a plan established or maintained pursuant to a collective bargaining agreement between employee representatives and one or more employers, but a plan shall not be considered to be a multiemployer plan within the meaning of this section unless the corporation determines that—

(A) under the plan benefits are payable with respect to each participant without regard to the cessation of contributions by the employer who employed that participant, and

(B) the amount of contributions made to or under the plan for a plan year by any employer making such contributions is less than 50 percent of the aggregate amount of contributions made to

or under the plan for that plan year by all employers making such contributions;

(4) "corporation" means the Pension Benefit Guaranty Corporation established under section 402; and

(5) "fund" means the Pension Benefit Guaranty Fund established under section 403.

(b) SPECIAL RULES.—

(1) NON-MULTIEMPLOYER PLANS.—A plan which is not a multiemployer plan shall be treated as the separate plan of each employer (with predecessor and successor employers treated as one employer) who contributed to or under the plan.

(2) EMPLOYER.—An individual who owns the entire interest in an unincorporated trade or business shall be treated as his own employer, and a partnership shall be treated as the employer of each partner who is an employee within the meaning of section 401(c)(1) of the Internal Revenue Code of 1954.

SEC. 402. PENSION BENEFIT GUARANTY CORPORATION.

(a) ESTABLISHMENT.—There is established within the Department of Labor a body corporate to be known as the Pension Benefit Guaranty Corporation (hereinafter referred to as the "Corporation"). In carrying out its functions under this Act the Corporation shall be administered by a Board of

Directors (as provided in subsection (c)), under the general supervision and direction of the Secretary of Labor.

(b) GENERAL POWERS.—*In addition to any specific power granted to the Corporation elsewhere in this Act, the Corporation shall have the power—*

(1) to sue and be sued, complain and defend, in its corporate name and through its own counsel, in any court, State or Federal;

(2) to adopt, alter, and use a corporate seal, which shall be judicially noticed;

(3) to adopt, amend, and repeal, by its Board of Directors, bylaws and rules relating to the conduct of its business and the exercise of all other rights and powers granted to it by this Act;

(4) to conduct its business (including the carrying on of operations and the maintenance of offices) and to exercise all other rights and powers granted to it by this Act in any State or other jurisdiction without regard to qualification, licensing, or other statute in such State or other jurisdiction;

(5) to lease, purchase, accept gifts or donations of, or otherwise to acquire, to own, hold, improve, use, or otherwise deal in or with, and to sell, convey, mortgage, pledge, lease, exchange, or otherwise dispose of, any

property, real, personal, or mixed, or any interest therein wherever situated;

(6) subject to the provisions of subsection (c), to elect or appoint such officers, attorneys, employees, and agents as may be required, to determine their qualifications, to define their duties, to fix their salaries, and, to the extent desired, require bonds for them and fix the penalty thereof;

(7) to enter into contracts, to execute instruments, to incur liabilities, and to do any and all other acts and things as may be necessary or incidental to the conduct of its business and the exercise of all other rights and powers granted to the Corporation by this Act.

(c) BOARD OF DIRECTORS.—The Board of Directors of the Corporation shall be composed of the Secretary of the Treasury, the Secretary of Labor, and the Secretary of Commerce. Members of the Board shall serve without compensation, but shall be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of their duties of members of the Board. The Secretary of Labor shall be the Chairman of the Board of Directors.

(d) MEETINGS OF BOARD.—The Board of Directors shall meet at the call of its Chairman, or as otherwise provided by the bylaws of the Corporation.

(e) Bylaws.—As soon as practicable but not later than 180 days after the date of enactment of this Act, the board of directors shall adopt initial bylaws and rules relating to the conduct of the business of the corporation. Thereafter, the board of directors may alter, supplement, or repeal any existing bylaw or rule, and may adopt additional bylaws and rules, from time to time as may be necessary. The Secretary of Labor shall cause a copy of the bylaws of the corporation to be published in the Federal Register not less than annually.

(f) Exemption From Tax.—The Pension Benefit Guaranty Corporation, its property, its franchise, capital, reserves, surplus, and its income (including, but not limited to, any income of the Pension Benefit Guaranty Fund and the Pension Benefit Portability Fund), shall be exempt from all taxation now or hereafter imposed by the United States (other than taxes imposed under chapter 21 of the Internal Revenue Code of 1954, relating to Federal Insurance Contributions Act, and chapter 23 of such Code, relating to Federal Unemployment Tax Act) or by any State or local taxing authority, except that any real property and any tangible personal property (other than cash and securities) of the corporation shall be subject to State and local taxation to the same extent according to its value as other real and tangible personal property is taxed.

SEC. 403. ESTABLISHMENT OF PENSION BENEFIT GUARANTY FUND.

(a) Trust Fund.—

(1) In general.—There is established on the books of the Treasury of the United States a trust fund to be known as the "Pension Benefit Guaranty Fund" (hereinafter in this title referred to as the "fund"). The fund shall remain available without fiscal year limitation and shall consist of such amounts as may be appropriated to it and deposited in it as provided in subsection (b). Upon request made by the Corporation, the Secretary of the Treasury shall transfer such amounts from the fund to the Corporation as the Corporation deems necessary to pay benefits guaranteed under section 422 and to pay the operational and administrative expenses of the Corporation.

(2) Trustee.—The Secretary of the Treasury is the trustee of the fund and shall report to the Congress not later than the first day of March of each year on the operation and status of the fund during the preceding fiscal year of the corporation.

(b) Authorization of Appropriations.—There is authorized to be appropriated to the fund for each fiscal year an amount equal to the amount of the collections of tax under section 4972 of the Internal Revenue Code of 1954

(relating to taxes on failure to meet minimum funding standard) and chapter 45 of such Code.

(c) PREMIUM RATES; COVERAGE SCHEDULES.—

(1) IN GENERAL.—The corporation shall prescribe such insurance premium rates and such coverage schedules for the application of those rates as may be necessary to provide sufficient revenue to the fund for the corporation to carry out its functions under this title.

(2) COVERAGE SCHEDULES.—The corporation shall maintain separate coverage schedules for—

(A) plans which are multiemployer plans,

(B) plans which are not multiemployer plans, and

(C) employers who wish to be insured against liability under part D of this title.

Except as provided in paragraph (3), the corporation may revise such schedules whenever it determines that revised rates are necessary, but a revised schedule described in subparagraph (A) or (B) shall apply only to taxable years beginning more than 30 days after the date on which the Congress approves such revised schedule by a concurrent resolution originating in the House of Representatives.

(3) INITIAL COVERAGE SCHEDULES FOR PLANS.—The rate of all plans with respect to plan years ending

with or within taxable years ending before January 1, 1977, shall be—

(A) in the case of each employer who maintains one or more plans other than a multiemployer plan, with respect to each such plan, an amount equal to $1 for each individual employed by him at any time during each plan year who is a participant in such plan at any time during such plan year; or

(B) in the case of a multiemployer plan, an amount equal to $1 for each individual who is employed by any of the employers in such plan at any time during each plan year and who is a participant in such plan at any one time during such plan year.

(d) Revised Coverage Schedule Procedure.—

(1) In general.—In order to place a revised coverage schedule (other than a schedule described in subsection (c)(2)(C) of this section) in effect, the corporation shall transmit the proposed schedule, its proposed effective date, and the reasons for its proposal to the Committee on Ways and Means of the House of Representatives.

(2) Exercise of rulemaking power of the Senate and the House of Representatives.—The

succeeding paragraphs of this subsection are enacted by Congress as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they shall be deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of resolutions described in paragraph (3); and they shall supersede other rules only to the extent that they are inconsistent therewith. They are enacted with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.

(3) Resolution.—For the purpose of the succeeding paragraphs of this subsection, "resolution" means only a concurrent resolution originating in the House of Representatives, the matter after the resolving clause of which is as follows: "That the Congress favors the proposed revised coverage schedule transmitted to Congress by the Pension Benefit Guaranty Corporation on ———.", the blank space therein being filled with the date on which the corporation's message proposing the rate was delivered.

(4) Referral of resolution.—A resolution shall be referred to the Committee on Ways and Means and the Committee on Education and Labor of the House of Representatives or the Committee on Finance and the Committee on Labor and Public Welfare of the Senate.

(5) Discharge of committee.—If the committee to which has been referred a resolution has not reported it before the expiration of 10 calendar days after its introduction, it shall then (but not before) be in order to move to discharge the committee from further consideration of that resolution, or to discharge the committee from further consideration of any other resolution with respect to the proposed adjustment which has been referred to the committee. The motion to discharge may be made only by a person favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported a resolution with respect to the same proposed rate), and debate thereon shall be limited to not more than 1 hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to. If the motion to discharge is agreed to or disagreed to, the motion may not be renewed, nor may another motion to discharge the

committee be made with respect to any other resolution with respect to the same proposed rate.

(6) CONSIDERATION OF RESOLUTION.—*When the committee has reported, or has been discharged from further consideration of a resolution, it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion is highly privileged and is not debatable. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to. Debate on the resolution shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the resolution. A motion further to limit debate is not debatable. An amendment to, or motion to recommit, the resolution is not in order, and it is not in order to move to reconsider the vote by which the resolution is agreed to or disagreed to.*

(7) DEBATABILITY OF MOTIONS.—*Motions to postpone, made with respect to the discharge from committee, or the consideration of, a resolution and motions to proceed to the consideration of other business shall be decided without debate. Appeals from the decisions of the Chair relating to the application of the rules of*

the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution shall be decided without debate.

(e) BORROWING AUTHORITY.—The corporation is authorized to issue to the Secretary of the Treasury notes or other obligations in an aggregate amount of not to exceed $100,000,000, in such forms and denominations, bearing such maturities, and subject to such terms and conditions as may be prescribed by the Secretary of the Treasury. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of such notes or other obligations of the corporation. The Secretary of the Treasury is authorized and directed to purchase any notes or other obligations issued by the corporation under this subsection, and for that purpose he is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, as amended, and the purposes for which securities may be issued under that Act, as amended, are extended to include any purchase of such notes and obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this subsection. All redemp-

tions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States.

PART B—COVERAGE

SEC. 421. PLANS COVERED.

(a) GENERAL RULE.—Except as provided by subsection (c), this section applies to any plan which, for a plan year, is, or has been determined by the Secretary of the Treasury to be, a plan described in section 401(a) of the Internal Revenue Code of 1954, or which meets the requirements of section 404(a)(2) of such Code. For purposes of this section, a successor plan is deemed to be a continuation of a predecessor plan. For this purpose, a successor plan is a plan which covers a group of employees which includes substantially the same employees as a previously established plan, and provides substantially the same benefits as that plan provided.

(b) CONSENT BY PLANS TO BE COVERED BY TITLE.—The filing of a return under section 6040 of the Internal Revenue Code of 1952 for a plan claiming treatment as a plan to which part I of subchapter D of chapter 1 of such Code applies shall constitute the consent of that plan and its administrator to be bound by the provisions of this title.

(c) LIMITATIONS.—This section shall not apply to any plan—

(1) which is a pension plan of the money purchase type, a profit-sharing plan, or a stock bonus plan,

(2) established and maintained by the United States, a State or political subdivision thereof, or a corporation which is an instrumentality of the United States, a State or political subdivision thereof,

(3) established and maintained by a church or a convention or association of churches which is exempt from tax under section 501(a) of the Internal Revenue Code of 1954, unless—

(A) such plan has notified the corporation, in accordance with procedures prescribed by the corporation, that it wishes to have the provisions of this title apply to it,

(B) the plan is established and maintained for the exclusive benefit of employees of such church or convention or association of churches who are employed exclusively in connection with one or more unrelated trades or businesses (within the meaning of section 513 of such Code), or

(C) the plan is a multiemployer plan, and one or more of the employers in the plan is not a church (or a convention or association of churches) which is exempt from tax under section 501(a) of such Code, or

(4) a plan established and maintained by a fraternal society, order, or association described in section 501(c) (8) or (9) of such Code under which no part of the contributions to or under the plan are made by employers of participants in the plan.

For purposes of paragraph (1) of this subsection, the term "money purchase type" does not include a plan under which a fixed benefit is promised if the employer or his representative participated in the determination of that benefit.

SEC. 422. BENEFITS COVERED.

(a) GENERAL RULE.—Subject to the limitations contained in subsection (b), the corporation shall guarantee the payment of all nonforfeitable benefits and of all ancillary benefits under the terms of a plan which terminates at a time when section 421 applies to it. For purposes of this subsection, the term "ancillary benefit" means any nonforfeitable benefit other than a nonforfeitable retirement benefit which is determined by the corporation to be insurable as an ancillary benefit.

(b) LIMITATIONS.—

(1) NEW BENEFITS.—No benefits provided by a plan in effect for less than 36 months at the time the plan terminates shall be guaranteed under this section. For purposes of this paragraph, the time a successor plan (within the meaning of section 421(a)) has been

in effect includes the time a previously established plan (within the meaning of section 421(a)) was in effect.

(2) Benefit increases.—The amount of benefits described in subsection (a) shall be determined without regard to any amendment of the plan which increases the value of benefits payable with respect to a participant, if such amendment was made within the 36-month period preceding the date on which the plan terminates.

(3) Maximum guaranteed benefit under single plan.—Except as provided in paragraphs (8) and (9), the amount of monthly benefits described in subsection (a) provided by a plan, which are guaranteed under this section with respect to a participant, shall not have an actuarial value which exceeds the actuarial value of a monthly benefit with no ancillary benefits in the form of a life annuity commencing at age 65 equal to the lesser of—

(A) 50 percent of his average monthly gross income from his employer during the 5 calendar year period (or, if less, during the number of calendar years in such period in which he actively participates in the plan) preceding the calendar year in which the plan terminates (or the calendar year in which he is no longer an active participant) determined by dividing 1/12th of the sum of all such

gross income by the number of such calendar years in which he had such gross income, or

(B) $750 multiplied by a fraction, the numerator of which is the contribution and benefit base (determined under section 230 of the Social Security Act) in effect at the time the plan terminates and the denominator of which is such contribution and benefit base in effect in calendar year 1974.

The actuarial value of a benefit (including ancillary benefits) shall be determined in accordance with bylaws of the corporation. For purposes of subparagraph (A), gross income within the meaning of section 911(b) of the Internal Revenue Code of 1954 from the employer; and the 5 calendar year period taken into account shall be the 5 consecutive calendar years period which yields the largest average annual gross income from an employer.

(4) MAXIMUM AMOUNT PAYABLE UNDER MORE THAN ONE PLAN.—Notwithstanding paragraph (3), no person shall receive from the corporation with respect to a participant an amount, or amounts, that has an actuarial value which exceeds a monthly benefit with no ancillary benefits in the form of a life annuity commencing at age 65 equal to the amount determined under paragraph (3)(B) at the time of the last plan termination.

(5) Certain participants.—

(A) This paragraph shall apply only to a participant who is covered by a plan as an owner-employee (within the meaning of section 401(c)(3) of such Code) on any day during the plan year in which the plan terminates or any of the 3 consecutive plan years immediately preceding such year.

(B) The amount of monthly benefits otherwise payable from the corporation with respect to each participant described in subparagraph (A) shall be reduced to take account of such participant's individual pro rata share of the accumulated funding deficiency (as defined in section 4971(a) of the Internal Revenue Code of 1954) at the time the plan terminates. The individual pro rata share shall be equal to such accumulated unfunded deficiency multiplied by a fraction, the numerator of which is the amount of benefits otherwise payable from the corporation with respect to such participant and the denominator of which is the value of benefits payable from the corporation with respect to all such participants on the date of termination.

(6) Disqualification.—

(A) Disqualification by secretary.—No benefits accrued under a plan after the date on

which the Secretary of the Treasury or his delegate issues notice that he has determined that any trust which is a part of a plan does not meet the requirements of section 401(a) of the Internal Revenue Code of 1954, or that the plan does not meet the requirements of section 404(a)(2) of such Code, are guaranteed under this section unless such determination is erroneous. This subparagraph shall not apply if the Secretary or his delegate subsequently issues a notice that such trust meets the requirements of section 401(a) of such Code or that the plan meets the requirements of section 404(a)(2) of such Code.

(B) OTHER DISQUALIFICATIONS.—No benefits accrued under a plan after the date on which an amendment of the plan is adopted which causes the Secretary of the Treasury or his delegate to determine that any trust under the plan has ceased to meet the requirements of section 401(a) of the Internal Revenue Code of 1954 or that the plan has ceased to meet the requirements of section 404(a)(2) of such Code, are guaranteed under this section unless such determination is erroneous. This subparagraph shall not apply if the amendment is

revoked as of the date it was first effective or amended to comply with such requirements.

SEC. 423. CONTINGENT LIABILITY COVERAGE.

(a) In General.—The corporation is authorized to insure any employer who maintains or contributes to or under a plan to which section 421 applies against the payment of any liability which would be imposed on him under part D of this title in the event of a termination of that plan.

(b) Premiums.—The corporation is authorized to prescribe and collect, in such manner as it deems to be appropriate, premiums for insurance offered under subsection (a). Such premiums shall be determined by the corporation and revised by it from time to time as may be necessary, without regard to the provisions of section 403(d), and shall be chargeable at a rate sufficient to fund any payments by the corporation which become necessary under any such contract of insurance.

(c) Contingent Liability Coverage.—No payment shall be made by the corporation under any contract of insurance entered into under this section with an employer for contingent liability arising with respect to any benefit unless the premiums under such contract have been paid by the employer and such contract has been in effect (with respect to any such benefit) for more than 60 months.

(d) No Payment if Employer Remains in Business.—No payment shall be made by the corporation under any contract of insurance entered into by it under this section with respect to the contingent liability of any employer who, within the meaning of section 462(f), remains in business after the termination of the plan with respect to which the contingent liability arose.

(e) Other Insurance.—Nothing in this section shall be considered to preclude the purchase by an employer of insurance from any other person, or to limit the circumstances under which that insurance is payable, or in any way to limit the terms and conditions of such insurance.

SEC. 424. OTHER RISKS.

The corporation is authorized to insure (subject to the limitations of section 422(b)(4)) the payment of other classes of benefits under a plan wherever feasible, to prescribe the terms and conditions of such insurance, and to establish and collect such premiums as may be necessary.

PART C—TERMINATIONS

SEC. 441. TERMINATION BY PLAN ADMINISTRATOR.

(a) General Rule.—Before the effective date of the termination of a plan, the plan administrator shall file a notice with the corporation that the plan is to be terminated and for a period of 90 days thereafter the plan administrator shall pay no amount pursuant to the termination procedure

of the plan unless, before the expiration of such period, he receives a notice of sufficiency under subsection (b). Thereafter, the plan administrator shall proceed with the termination of the plan in a manner consistent with section 444.

(b) Notice of Sufficiency.—If the corporation determines that, after application of section 444, the assets held under the plan are sufficient to discharge when due all obligations of the plan with respect to benefits guaranteed under section 422 (without regard to section 422(b)(5)), it shall notify the plan administrator of such determination as soon as practicable.

(c) Notice of Insufficiency.—If, within a period of 90 days after a notice of termination is filed by a plan administrator pursuant to subsection (a), the corporation finds that it is unable to determine that, after application of section 444, the assets held under the plan are sufficient to discharge when due all obligations of the plan with respect to benefits guaranteed under section 422 (without regard to section 422(b)(5)), it shall notify the plan administrator within such 90-day period of such finding. Upon issuance of such notice, the plan shall be treated as if it had been terminated by the corporation under section 442 on the date such notice is issued.

(d) Extension of Time.—The corporation and the plan administrator may agree to extend the 90-day period

provided by this section by a written agreement signed by the corporation and the plan administrator before the expiration of the 90-day period. Such agreement shall extend the 90-day period in accordance with the agreement. The 90-day period may be further extended by subsequent written agreements signed by the corporation and the plan administrator made before the expiration of a previously agreed upon extension of the 90-day period. Any extension may be made upon such terms and conditions (including the payment of benefits) as are agreed upon by the corporation and the plan administrator.

(e) Subsequent Insufficiency.—If in terminating the plan as authorized by this section, the plan administrator finds that the plan is unable, or will be unable, to pay when due, benefits guaranteed under section 422 (without regard to section 422(b)(5)) the plan administrator shall notify the corporation of such finding as soon as practicable thereafter. If the corporation concurs with the finding of the plan administrator, it shall terminate the plan under section 442.

(f) Certain Amendments of Plan.—For purposes of subsection (a), a plan with respect to which benefits are guaranteed under section 422 shall be treated as terminated upon the adoption of an amendment to such plan, if, after giving effect to such amendment, the plan is a plan described in section 421(c)(1).

SEC. 442. TERMINATION BY PENSION BENEFIT GUARANTY CORPORATION.

(a) PRELIMINARY DETERMINATION.—The corporation may institute proceedings under this section to terminate a plan whenever it determines that—

(1) the plan has not met the minimum funding standard required under section 4971 of the Internal Revenue Code of 1954, or has been notified by the Secretary of the Treasury that a notice of deficiency under section 6212 of such Code has been mailed with respect to the tax imposed under section 4972(a) of such Code,

(2) the plan is unable to pay benefits when due to the extent guaranteed under section 422 (without regard to section 422(b)(5)),

(3) the reportable event described in section 443(b)(8) has occurred, or

(4) the liability of the corporation may reasonably be expected to increase substantially if the plan is not terminated.

(b) NOTICE TO PLAN.—Whenever the corporation makes a determination under subsection (a) with respect to a plan it may, upon notice to the plan, apply to the appropriate United States district court for the appointment of a trustee to administer the plan with respect to which the de-

termination is made pending the issuance of a decree under subsection (c) ordering the termination of the plan. If within 3 business days after the filing of an application under this subsection, or such other period as the court may order, the administrator of the plan shall consent to the appointment of a trustee, or fail to show why a trustee should not be appointed, the court may grant the application and appoint a trustee to administer with plan in accordance with its terms until the corporation determines that the plan should be terminated or that termination is unnecessary.

(c) Application for Decree.—If the corporation has issued a notice under this section to a plan administrator and (whether or not a trustee has been appointed under subsection (b)) has determined that the plan should be terminated, it may, upon notice to the plan administrator, apply to the appropriate United States district court for a decree adjudicating that the plan must be terminated in order to protect the interests of the participants and to avoid any further deterioration of the financial condition of the plan or any further increase in the liability of the fund. Upon granting a decree for which the corporation has applied under this subsection the court shall authorize the trustee appointed under subsection (b) (or appoint a trustee if one has not been appointed under such subsection and authorize

him) to terminate the plan in accordance with the provisions of section 444.

(d) Powers and Duties of the Trustee.—

(1) Powers.—

(A) Powers before issuance of decree.—A trustee appointed under subsection (b) shall, until the issuance of a decree under subsection (c), have the power—

(i) to do any act authorized by the plan or this title to be done by the plan administrator or any trustee of the plan;

(ii) to require the transfer of all (or any part) of the assets and records of the plan to himself as trustee.

(iii) to invest any assets of the plan which he holds in accordance with the provisions of the plan and applicable rules of law;

(iv) to limit payment of benefits under the plan to amounts guaranteed by section 422 (without regard to section 422(b)(5)) or to continue payment of some or all of the benefits which were being paid prior to his appointment; and

(v) to do such other acts as he deems necessary to continue operation of the plan without

increasing the political liability of the corporation, if such acts may be done under the provisions of the plan.

If the court which application is made under subsection (c) dismisses the application with prejudice, or if the corporation fails to apply for a decree under subsection (c) within 30 days after the date on which the trustee is appointed, the trustee shall transfer all assets and records of the plan held by him to the plan administrator within 3 business days after such dismissal or the expiration of such 30-day period, and shall not be liable to the plan or any other person for his acts as trustee except for willful misconduct.

(B) POWERS UPON ISSUANCE OF DECREE.—If the court to which an application is made under subsection (c) issues the decree requested in such application, the trustee shall have the power—

(i) to pay benefits under the plan in accordance with the provisions of section 444,

(ii) to collect for the plan any amounts due the plan,

(iii) to receive any payment made by the corporation to the plan under this title,

(iv) to commence, prosecute, or defend on

behalf of the plan any suit or proceeding involving the plan, other than a suit or proceeding in which the corporation is an adverse party,

(v) to issue, publish, or file such notices, statements, and reports as may be required by the corporation or any order of the court,

(vi) to liquidate the plan assets, and

(vii) to do such other acts as may be necessary to comply with this title or any order of the court and to protect the interests of plan participants and beneficiaries.

(2) NOTICE TO INTERESTED PARTIES.—As soon as practicable after his appointment, the trustee shall give notice to interested parties of the institution of proceedings under this title to determine whether the plan should be terminated or to terminate the plan, whichever is applicable. For purposes of this paragraph, the term "interested party" means—

(A) the plan administrator,

(B) each participant in the plan and each beneficiary of a deceased participant, and

(C) each employer who may be subject to liability under section 462.

(3) DUTIES.—Except to the extent inconsistent with the provisions of this Act, or as may be otherwise

ordered by the court, a trustee appointed under this section shall be subject to the same duties as a trustee appointed under section 47 of the Bankruptcy Act.

(e) Effect of Other Pending Actions.—An application by the corporation under this section may be filed notwithstanding the pendency in the same or any other court of any bankruptcy, mortgage foreclosure, or equity receivership proceeding, or any proceeding to reorganize, conserve, or liquidate such plan or its property, or any proceeding to enforce a lien against property of the plan.

(f) Executive Jurisdiction Over Plan.—Upon the filing of an application for the appointment of a trustee or the issuance of a decree under this section, the court to which an application is made shall have exclusive jurisdiction of the plan involved and its property wherever located, with the powers, to the extent consistent with the purposes of this section, of a court of bankruptcy and of a court in a proceeding under chapter X of the Bankruptcy Act. Pending an adjudication under subsection (c) such court shall stay, and upon appointment by it of a trustee as provided in this section such court shall continue the stay of, any pending bankruptcy, mortgage foreclosure, equity receivership, or other proceeding to reorganize, conserve, or liquidate the plan or its property and any other suit against any receiver, conservator, or trustee of the plan or its property. Pending such

adjudication and upon the appointment by it of such trustee, the court may stay any proceeding to enforce a lien against property of the plan or any other suit against the plan.

(g) Appropriate Court.—An action under this subsection may be brought in the judicial district where the plan administrator resides or is doing business or where any property of the trust forming a part of the plan is situated. A district court in which such action is brought may issue process with respect to such action in any other judicial district.

SEC. 443. REPORTABLE EVENTS.

(a) Report of Event.—Within 30 days after the occurrence of a reportable event, the plan administrator shall notify the corporation that such event has occurred.

(b) Occurrence of Reportable Event.—For purposes of this section a reportable event occurs—

(1) Loss of qualified or exempt status by trust.—At the time the Secretary of the Treasury issues notice that he has determined that any trust which is a part of the plan and which has previously qualified under section 401(a) of the Internal Revenue Code of 1954, or which the Secretary of the Treasury has previously determined has so qualified, has ceased to so qualify, or ceased to be exempt from tax under section 501(a) of such Code;

(2) Loss of qualified status by plan.—At the time the Secretary of the Treasury issues notice that he has determined that a plan which has previously satisfied the requirements of section 404(a)(2) of the Internal Revenue Code of 1954 or which the Secretary of the Treasury has previously determined has satisfied such requirements, has ceased to satisfy such requirements;

(3) Benefit decreased.—At the time an amendment of the plan is adopted if, under the amendment, the benefit payable with respect to any participant may be decreased;

(4) Decrease in participants.—At the time the number of active participants is less than 80 percent of the number of such participants at the beginning of the plan year or less than 75 percent of the number of such participants at the beginning of the previous plan year;

(5) Termination under internal revenue code.—At the time the Secretary of the Treasury determines that there has been a termination or partial termination of the plan or a complete discontinuance of contributions thereunder, within the meaning of section 401(a)(7) of the Internal Revenue Code of 1954;

(6) FAILURE TO MEET MINIMUM FUNDING STANDARD.—At the time the plan fails to meet the minimum funding standard under section 4971 of the Internal Revenue Code of 1954;

(7) PLAN UNABLE TO PAY BENEFITS.—At the time a plan is unable to pay benefits thereunder when due; or

(8) CERTAIN DISTRIBUTIONS.—At the time there is a distribution under a plan to a participant who is an owner-employee (within the meaning of section 401(c)(3) of the Internal Revenue Code of 1954) if such distribution is made other than on account of death or disability, exceeds $10,000, and results in the creation of, or an increase in, unfunded vested liabilities under the plan.

(c) NOTIFICATION BY SECRETARY OF THE TREASURY.—The Secretary of the Treasury shall notify the corporation whenever he makes a determination described in paragraph (1) or (5) of subsection (b), issues the notice described in paragraph (2) of such subsection, mails a notice of deficiency under section 6212 of the Internal Revenue Code of 1954 to a plan with respect to the tax imposed under section 4972(a) of such Code, or obtains any other information with respect to a plan which constitutes a reportable event.

SEC. 444. ALLOCATION OF ASSETS.

As soon as practicable after the termination of a plan to which section 421 applies, the plan administrator shall allocate the assets of the plan as follows:

(1) CERTAIN EMPLOYEE CONTRIBUTIONS.—In the case of a plan which provides for employee contributions other than mandatory contributions, the portion of an employee's accrued benefit derived from such employee contributions shall be treated as an accrued benefit derived from contributions under a plan other than a plan to which section 421 applies, and, before applying paragraph (2), assets shall first be allocated to such other plan in accordance with the account balances of the participants in such other plan.

(2) MANDATORY CONTRIBUTIONS.—Assets shall first be allocated to each participant to the extent of his total mandatory contributions. In the event that the assets are insufficient for this purpose, the assets shall be so allocated pro rata.

(3) BENEFITS IN PAY STATUS FOR AT LEAST 3 FULL YEARS.—If the assets of the plan exceed the total amount allocated under paragraphs (1) and (2), the remaining assets shall be allocated to each participant who began to receive payment of benefits not less than 3 years prior to the time the plan terminates to the extent

not included in paragraphs (1) and (2) and to the extent of the excess of the present value (as of the date on which the plan terminated) of his benefits (at the level in effect 36 months prior to the date of termination) over his total mandatory contributions under the plan. If the assets of the plan are insufficient for this purpose, the assets remaining after the allocation described in paragraphs (1) and (2) shall be so allocated pro rata.

(4) OTHER GUARANTEED BENEFITS.—If the assets of the plan exceed the total amounts allocated under paragraphs (1), (2), and (3), the remaining assets shall be allocated to each participant to the extent of the present value of all other benefits guaranteed under section 422 (without regard to section 422(b)(5)). If the assets of the plan are insufficient for this purpose, the assets remaining after the allocations described in paragraphs (1) and (2) shall be so allocated pro rata with respect to all such other benefits of each participant.

For purposes of this section, "mandatory contributions" are amounts contributed to the plan by the participant which are required as a condition of employment, as a condition of participation in such plan, or in order to obtain benefits under the plan attributable to employer contribu-

tions. For this purpose the total amount of mandatory contributions of a participant is the amount of such contributions reduced (but not below zero) by the sum of the amounts paid or distributed to him under the plan prior to such termination.

SEC. 445. RECAPTURE OF CERTAIN PAYMENTS.

(a) AUTHORITY.—To the extent the Corporation would not otherwise have the power under this title to undertake the action described in this section with respect to a plan, the Corporation shall have such power with respect to any plan which affects interstate commerce. For purposes of this section, a plan affects commerce if a labor dispute concerning the plan would hinder or obstruct commerce or the free flow of commerce.

(b) RECAPTURE.—Except as provided in subsection (c), the Corporation is authorized to recover from a participant the recoverable amount of all payments from the plan to him which commenced within the 3-year period immediately preceding the time the plan is terminated. The recoverable amount is the sum of all payments actually received by the participant reduced by (1) the amounts such participant would have received during such 3-year period if he had elected at the time of the first such payment to receive his interest in the plan as a monthly benefit equivalent to a monthly benefit with no ancillary benefit in

the form of a life annuity commencing at age 65 and (2) the present value at the time of termination of the benefits guaranteed under this title to the extent such benefits exceed his pro rata share of the corporation liability (determined under section 461). Such pro rata share shall be determined in accordance with bylaws or rules of the corporation.

(c) Special Rules.—

(1) Certain distributions.—In the event of a distribution described in section 443(b)(8) the 3-year period referred to in subsection (b) shall not commence until the date on which the corporation is notified of the distribution.

(2) No recovery for death or disability distributions.—The corporation shall not recover any payment made from a plan after or on account of the death of a participant, or on account of his disability (if he is receiving disability benefits under the Social Security Act with respect to that disability).

(3) Waiver.—The corporation is authorized to waive, in whole or in part, the recovery of any amount which it is authorized to recover under this part in any case in which it determines that substantial economic hardship would result to the participant or his beneficiaries from whom such amount is recoverable.

SEC. 446. REPORT BY CORPORATION.

The corporation shall furnish to the trustee and file with the court a report setting forth—

(1) the amount of benefits payable with respect to each participant under a plan to be terminated,

(2) the amount of benefits guaranteed under section 422 which are payable with respect to each participant in the plan,

(3) the present value, as of the time of termination, of the aggregate amount of benefits payable under section 422 (determined without regard to section 422(b)(5)),

(4) the fair market value of the assets of the plan at the time of termination,

(5) the computations under section 444, and all actuarial assumptions under which the items described in paragraphs (1) through (4) were computed, and

(6) such other information with respect to the plan as the trustee may require in order to terminate the plan.

PART D—LIABILITY

SEC. 461. CORPORATION LIABILITY.

The liability of the corporation with respect to a plan which is terminated under this title shall be equal to the present value, as of the time of termination, of the aggregate amount of benefits guaranteed under section 422 (determined without regard to section 422(b)(5)), to the extent not pro-

vided for by the fair market value of the assets of the plan, at such time, allocated in a manner consistent with the requirements of section 444. This amount shall be payable from the fund described in section 403.

SEC. 462. LIABILITY OF EMPLOYER.

(a) EMPLOYERS LIABLE.—This section applies to any employer who maintained a plan (other than a multiemployer plan) at the time it was terminated by the corporation, but does not apply—

(1) to an employer who maintained a plan with respect to which he paid the annual optional premium described in paragraphs (2)(C) and (3)(B) of section 403(b) for each of the 5 plan years immediately preceding the plan year during which the plan terminated unless the employer remains in business (as defined in subsection (f)), or

(2) to the extent of any liability arising out of the insolvency of a qualified insurance carrier (as defined in section 301(4) of this Act).

(b) AMOUNT OF LIABILITY.—Any employer to which this section applies shall be liable to the Corporation, in an amount equal to the lesser of—

(1) the amount finally determined under section 461, or

(2) 30 percent of the net worth of such employer determined as of the day 120 days prior to the date of termination, without regard to any liability under this section.

(c) NET WORTH.—For purposes of subsection (b)(2) the net worth of an employer means—

(1) in the case of a corporation whose stock is traded on a national exchange, the aggregate value of such corporation's stock, and

(2) in the case of any other employer, the fair market value of its assets less its liabilities determined in a manner consistent with section 2031 of the Internal Revenue Code of 1954.

(d) SUBORDINATION OF DEBT.—If any employer or employers liable to the corporation under this section or section 464 neglects or refuses to repay, after demand, the amount of such liability (including the interest) there shall be a lien in favor of the United States upon all property and rights of property, whether real or personal, belonging to such employer or employers, against the interest of any other creditor of such employer or employers, other than a lien under section 6321 or 6324 of the Internal Revenue Code of 1954 (relating to lien for taxes), or a lien or other security interest perfecting not later than 30 days after termination securing an obligation incurred by such employer or

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employers prior to termination. Notwithstanding the provisions of the preceding sentence, if the corporation determines, with the consent of the board of directors, that subordination of the lien to any other creditor of the employer or employers would not adversely affect the collection of such liability, or that the amount realizable by the corporation from the property to which the lien attaches will ultimately be increased by such subordination, and that the ultimate collection of the liability will be facilitated by such subordination, and the corporation issues a certificate of subordination of the lien with respect to such property, or any part thereof.

(e) SUCCESSOR LIABILITY.—For purposes of this section the following rules apply in the case of certain corporation reorganizations—

(1) CHANGE IN IDENTITY, ETC.—If an employer ceases to exist by reason of a reorganization which involves a mere change in identify, form, or place of organization, however effected, a successor corporation resulting from such reorganization shall be treated as the employer to whom this section applies.

(2) LIQUIDATION INTO PARENT.—If an employer ceases to exist by reason of a liquidation into a parent corporation, the parent corporation shall be treated as the employer to whom this section applies.

(3) Reorganization.—If an employer ceases to exist by reason of a merger or consolidation, the successor corporation shall be treated as the employer to whom this section applies.

(f) Remaining in Business.—For purposes of subsection (a), an employer shall be considered to remain in business if, during the plan year within which the plan terminates or the 36-month period following the date of termination, the employer—

(1) is a party to a reorganization described in subsection (e), or

(2) continues to carry on the same business as, or a business similar to, the business in connection with which he maintained the plan which was terminated, without regard to whether he continues to carry on such business at the same location or at a different location.

For purposes of paragraph (2), in the case of a business in which sales are the primary income producing factors, if an employer's gross sales during the year of plan termination or during the 12-month period following the date of termination in such business are less than 25 percent of his average gross sales in such business for the 3 years immediately preceding that year, the employer shall not be considered to have remained in business.

(g) Termination of Substantial Facility.—If an employer ceases operations at a facility in any location and, as a result of such cessation of operations, more than 20 percent of the total number of his employees who are participants under a plan established and maintained by him are separated from employment the employer shall be treated with respect to that plan as if he were a substantial employer under a multiemployer plan and the provisions of sections 463 and 464 shall apply.

SEC. 463. LIABILITY OF SUBSTANTIAL EMPLOYER FOR WITHDRAWAL.

(a) General Rule.—Except as provided in subsection (d), the plan administrator of a multiemployer plan—

(1) shall notify the corporation of the withdrawal of a substantial employer from the plan, within 60 days after such withdrawal, and

(2) request that the corporation determine the liability of such employer under this title with respect to such withdrawal.

The corporation shall, as soon as practical thereafter, determine whether such employer is liable for any amount under this title with respect to the withdrawal and notify such employer of such liability.

(b) Liability of Employer.—Except as provided in subsection (c) an employer who withdraws from a plan to

which section 421 applies, during a plan year for which he was a substantial employer, and who is notified by the corporation as provided by subsection (a), shall be liable to the corporation in accordance with the provisions of section 461 (without regard to the provisions of paragraphs (1) and (2) of section 462(a)) and this section. The amount of such employer's liability shall be computed on the basis of an amount determined by the corporation to be the amount described in section 461 for the entire plan, as if the plan had been terminated by the corporation on the date of the employer's withdrawal, multiplied by a fraction—

(1) the numerator of which is the total amount contributed to the plan by such employer for the last 5 years ending prior to the withdrawal, and

(2) the denominator of which is the total amount contributed to the plan by all employers for such last 5 years.

Any amount collected by the corporation under this subsection shall be held in escrow subject to disposition in accordance with the provisions (2) and (3) of subsection (c).

(c) SPECIAL RULE.—

(1) FURNISHING OF BOND.—In lieu of payment of his liability under this section the employer may be required to furnish a bond to the corporation in an amount not exceeding 150 percent of his liability to

insure payment of his liability under this section. Such bond shall be in such form and with such surety or sureties and upon such conditions as the corporation may require.

(2) No termination within 5-year period.—If the plan is not terminated within the 5-year period commencing on the day of withdrawal, the liability of such employer shall be abated and any payment held in escrow shall be refunded without interest to the employer (or his bond canceled) in accordance with bylaws or rules prescribed by the corporation.

(3) Termination within 5-year period.—If the plan terminates within the 5-year period commencing on the day of withdrawal, the corporation shall—

(A) demand payment or realize on the bond and hold such amount in escrow for the benefit of the plan;

(B) treat any escrowed payments under this section as if they were plan assets and apply them in a manner consistent with this title; and

(C) refund any amount to the employer which is not required to meet any obligation of the corporation with respect to the law.

(d) Alternative Procedure.—The provisions of this subsection shall apply in the case of a withdrawal described

in subsection (a), and the provisions of subsections (b) and (c) shall not apply, if the corporation determines that the procedure provided for under this subsection is consistent with the purposes of this section and section 464 and is more appropriate in the particular case. Upon a showing by the plan administrator of a multiemployer plan that the withdrawal from the plan by any employer or employers has resulted, or will result, in a significant reduction in the amount of aggregate contributions to or under the plan by employers, the corporation may—

(1) require the plan fund to be equitably allocated between those participants no longer working in covered service under the plan as a result of their employer's withdrawal, and those participants who remain in covered service under the plan;

(2) treat that portion of the plan fund allocable under paragraph (1) to participants no longer in covered service as a termination; and

(3) treat that portion of the plan fund allocable to participants remaining in covered service as a new plan.

(e) NO WITHDRAWAL LIABILITY UNDER ALTERNATIVE PROCEDURE.—The corporation is authorized to waive the application of the provisions of subsections (b), (c), and (d) of this section to any employer or plan administrator

whenever it determines that there is an indemnity agreement in effect among all other employers under the plan which is adequate to satisfy the purposes of this section and of section 464.

(f) RULES.—The corporation is authorized to prescribe rules as it deems necessary in order to implement the purposes of this section.

SEC. 464. LIABILITY OF EMPLOYERS ON TERMINATION OF MULTIEMPLOYER PLAN.

(a) APPLICATION OF SECTION.—This section shall apply to all employers who maintain a multiemployer plan at the time such plan is terminated.

(b) LIABILITY OF SUCH EMPLOYER.—The corporation shall determine the liability of each such employer in a manner consistent with section 462 except that the amount of the liability determined under section 462(b)(1) with respect to the entire plan shall be allocated to each employer by multiplying such amount by a fraction—

(1) the numerator of which is the amount contributed to the plan by each employer for the last 5 plan years ending prior to the termination, and

(2) the denominator of which is the total amount contributed to the plan by all such employers for such last 5 years,

and the limitation described in section 462(b)(2) shall be applied separately to each employer.

SEC. 465. ANNUAL REPORT OF PLAN ADMINISTRATOR.

For each plan year for which section 421 applies to a plan, the plan administrator shall file with the corporation, on a form prescribed by the corporation, an annual report which identifies the plan and plan administrator and which includes—

(1) a copy of each notification, required under section 463 with respect to such year, and

(2) a statement disclosing whether any reportable event (described in section 443(b)) occurred during the plan year.

The report shall be filed within 6 months after the close of the plan year to which it relates.

SEC. 466. ANNUAL NOTIFICATION TO SUBSTANTIAL EMPLOYERS.

The plan administrator of each multiemployer plan shall notify, within 6 months after the close of each plan year, any employer making contributions under that plan who is described in section 401(a)(2)(A) that he is a substantial employer for that year.

SEC. 467. RECOVERY OF EMPLOYER LIABILITY FOR PLAN TERMINATION.

(a) COLLECTION.—The corporation is authorized to make arrangements with employers, liable under section 462, 463, or 464 for payment of their liability, including arrangements for deferred payment on such terms and for such periods as the corporation deems equitable and appropriate.

(b) DISPOSITION OF EMPLOYER LIABILITY PAYMENTS.—Any amounts received by the corporation as payments of employer liability under this part may be retained by it and used to defray operating and administrative expenses.

PART E—AMENDMENTS TO INTERNAL REVENUE CODE OF 1954; EFFECTIVE DATES

SEC. 481. AMENDMENTS TO INTERNAL REVENUE CODE OF 1954.

(a) SECTION 401(a).—Section 401(a) (relating to requirements for qualification) is amended by inserting at the end thereof the following new paragraphs:

"(14) In the case of a plan which is required to register with the Secretary or his delegate under the provisions of section 151 of the Retirement Income

Security for Employees Act, a trust forming part of such plan shall not constitute a qualified trust under this section unless the plan is so registered.

"(15) In the case of a plan which is required to provide for determination of disputes under the provisions of part A of title VI of the Retirement Income Security for Employees Act, a trust forming a part of such plan shall not constitute a qualified trust under this section unless the plan so provides.

"(16) In the case of a plan to which section 421 of the Retirement Income Security for Employees Act, a trust forming a part of such plan shall not constitute a qualified trust under this section unless the plan provides for the maintenance of insurance under title IV of such Act.

"(17) A trust shall not constitute a qualified trust under this section unless the plan of which it is a part provides that, unless the participant and his employer agree otherwise in writing, the payment of benefits under the plan to which section 411 applies will commence not later than the later of the thirtieth day after—

"(A) the date on which the participant attains the age of 65 years, or

"(B) the date on which the participant completes 10 years of participation in the plan.".

(b) SECTION *162.—Section 162 (relating to trade or business expenses) is amended by redesignating subsection (h) as (i) and inserting after subsection (g) the following new subsection:*

"(h) INSURED PENSION LOSSES.*—No deductions shall be allowed under subsection (a) for any payment to the Pension Benefit Guaranty Corporation with respect to liability for a plan termination.".*

(c) SECTION *4981.—Subtitle D (relating to miscellaneous excise taxes) is amended by adding at the end thereof the following new chapter:*

"CHAPTER 45—CERTAIN GUARANTEED BENEFIT PLANS

"Sec. 4981. Excise tax on privilege of maintaining insured plan.

"SEC. 4981. EXCISE TAX ON PRIVILEGE OF MAINTAINING INSURED PLAN.

"(a) IMPOSITION OF TAX.*—There is hereby imposed on the privilege of maintaining a plan insured under the provisions of title IV of the Retirement Income Security for Employees Act a tax determined under subsection (b) for any plan year during which section 421 of such Act applies at any time.*

"(b) RATE OF TAX.*—*

"(1) IN GENERAL.*—Except as provided in paragraph (2), the rate of tax for a plan year shall be*

equal to the rate contained in the coverage schedule in effect for that plan year under subparagraph (A) (in the case of a plan which is not a multiemployer plan) or subparagraph (B) (in the case of a multiemployer plan) of section 403(c)(2) of the Retirement Income Security for Employees Act.

"(2) ALTERNATE TAX.—In the case of a taxpayer to which subparagraph (C) (in the case of a plan which is not a multiemployer plan) or subparagraph (D) (in the case of a multiemployer plan) of section 403(c)(2) of the Retirement Income Security for Employees Act applies, the rate of tax for a plan year shall be equal to the rate contained in the coverage schedule in effect for that plan year under such subparagraph.

"(c) BY WHOM PAYABLE.—The tax imposed under subsection (a) shall be paid by the administrator (as defined in section 3(15) of the Welfare and Pension Plans Disclosure Act) of a plan.

"(d) EXCEPTION.—This section shall not apply with respect to a plan year in which the plan terminates under section 441 or 442 of the Retirement Income Security for Employees Act.

"(e) DEFINITION OF MULTIEMPLOYER PLAN.—The term 'multiemployer plan' means a plan described in section

401(3) of the Retirement Income Security for Employees Act.

"(f) CROSS REFERENCE.—

"For penalties and other general and administrative provisions applicable to this section, see subtitle F.".

(d) AMENDMENT OF SECTION 6511.—Section 6511 (d) (relating to special rules applicable to income taxes) is amended by adding at the end thereof the following new paragraph:

"(8) SPECIAL PERIOD OF LIMITATION WITH RESPECT TO AMOUNTS INCLUDED IN INCOME SUBSEQUENTLY RECAPTURED UNDER QUALIFIED PLAN TERMINATION.—If the claim for credit or refund relates to an overpayment of tax imposed by subtitle A on account of the recapture, under section 445 of the Retirement Income Security for Employees Act, of amounts included in income for a prior taxable year, the 3-year period of limitation prescribed in subsection (a) shall be extended until the date which occurs one year after the date on which such recaptured amount is paid by the taxpayer.".

(e) CONFORMING AMENDMENTS.—

(1) Section 404(a)(2) (relating to deduction for contributions of an employer to employees' annuity plan) is amended by striking out "and (8), and if appli-

cable, the requirements of section 401(a) (9) and (10) and of section 401(d) (other than paragraph (1))," and inserting in lieu thereof "(8), (11), (12), 13, (14), (15), and (16), and, if applicable, the requirements of section 401(a) (9) and (10), of section 401(c)(6), and of section 401(d) (other than paragraph (1)),".

(2) Section 805(d)(1)(C) (relating to definition of pension plan reserves) is amended by striking out "and (8)" and inserting in lieu thereof "(8), (11), (12), (13), (14), (15), and (16)".

(f) CLERICAL AMENDMENT.—The table of chapters for subtitle D is amended by adding at the end thereof the following new item:

"Chapter 45. Certain guaranteed benefit plans.".

SEC. 482. EFFECTIVE DATES.

(a) IN GENERAL.—Except as provided in subsections (b) and (c), this title shall take effect on the date of enactment of this Act.

(b) PRIVILEGE TAX.—The amendments made by section 481 shall apply with respect to plan years and taxable years beginning after December 31, 1973.

(c) TERMINATIONS; LIABILITY.—Part C and part D shall apply with respect to plan years beginning after December 31, 1976, unless the corporation determines that moneys

in the fund are sufficient to enable it to meet its liability under section 461 with respect to terminations occurring before that date.

PART F—ALLOCATION OF ASSETS WHERE SECTION 444 DOES NOT APPLY

SEC. 491. ALLOCATION OF ASSETS FOR PLAN TERMINATIONS NOT COVERED.

(a) IN GENERAL.—If a plan to which this title applies is terminated and the provisions of section 444 do not apply to that termination, the administrator of the plan shall allocate the assets of the plan in accordance with the provisions of that section (without regard to the 3-year pay status for benefits rule of paragraph (3)).

(b) APPLICATION OF SECTION.—The provisions of subsection (a) shall apply with respect to the termination of any plan other than a plan which is in existence on the date of enactment of this Act and with respect to which there is in effect on such date a written provision governing allocation of assets under the plan upon termination.

TITLE V—DISCLOSURE AND FIDUCIARY STANDARDS

PART A—DISCLOSURE

AUTHORITY TO ISSUE REGULATIONS

SEC. 501. (a) The Secretary of Labor shall have authority to issue such rules and regulations as are necessary to

implement the provisions of this Act and the Welfare and Pension Plans Disclosure Act.

(b) In order to avoid unnecessary expenses and duplication of functions among government agencies the Secretary may make such arrangements or agreements for cooperation or mutual assistance in the performance of his functions under this Act and the Welfare and Pension Plans Disclosure Act and the functions of any agency, Federal or State, as he may find to be practicable and consistent with law. The Secretary may utilize on a reimbursable or other basis the facilities or services of any department, agency, or establishment of the United States or of any State including services of any of its employees with the lawful consent of such department, agency, or establishment; and each department, agency, or establishment of the United States is authorized and directed to cooperate with the Secretary and to the extent permitted by law to provide such information and facilities as the Secretary may request for his assistance in the performance of his functions under this Act.

AMENDMENT TO WELFARE AND PENSION PLANS DISCLOSURE ACT

SEC. 502. (a) Section 3 of the Welfare and Pension Plans Disclosure Act (72 Stat. 997) is amended by adding at the end thereof the following new paragraphs:

"*(14) The term 'relative' means a spouse, ancestor, descendant, brother, sister, son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law.*

"*(15) The term 'administrator' means—*

"*(A) the person specifically so designated by the terms of the plan, collective bargaining agreement, trust agreement, contract, or other instrument, under which the plan is operated; or*

"*(B) in the absence of such designation (i) the employer in the case of an employee benefit plan established or maintained by a single employer, (ii) the employee organization in the case of a plan established or maintained by an employee organization, or (iii) the association, committee, joint board of trustees, or other similar group of representatives of the parties who established or maintained the plan, in the case of a plan established or maintained by two or more employers or jointly by one or more employers and one or more employee organizations.*

"*(16) The term 'employee benefit plan' or 'plan' means an employee welfare benefit plan or an employee pension benefit plan or a plan providing both welfare and pension benefits.*

"(17) The term 'employee benefit fund' or 'fund' means a fund of money or other assets maintained pursuant to or in connection with an employee benefit plan and includes employee contributions withheld but not yet paid to the plan by the employer. The term does not include: (A) any assets of an investment company subject to regulation under the Investment Company Act of 1940; (B) premium, subscription charges, or deposits received and retained by an insurance carrier or service or other organization, except for any separate account established or maintained by an insurance carrier.

"(18) The term 'separate account' means an account established or maintained by an insurance company under which income, gains, and losses, whether or not realized, from assets allocated to such account, are, in accordance with the applicable contract, credited to or charged against such account without regard to other income, gains, or losses of the insurance company.

"(19) The term 'adequate consideration' when used in section 15 means either (A) at no more than the price of the security prevailing on a national securities exchange which is registered with the Securities and Exchange Commission, or (B) if the security is not traded on such a national securities exchange, at a price not less favorable to the fund than the offering price for the security as established

by the current bid and asked prices quoted by persons independent of the issuer, or (C) if the price of the security is not quoted by persons independent of the issuer, a price determined to be the fair value of the security.

"(20) The term 'nonforfeitable pension benefit' means a legal claim obtained by a participant or his beneficiary to that part of an immediate or deferred pension benefit which, notwithstanding any conditions subsequent which would affect receipt of any benefit flowing from such right, arises from the participant's covered service under the plan and is no longer contingent on the participant remaining covered by the plan.

"(21) The term 'covered service' means that period of service performed by a participant for an employer or as a member of an employee organization which is recognized under the terms of the plan or the collective-bargaining agreement (subject to the requirements of the Retirement Income Security for Employees Act), for purposes of determining a participant's eligibility to receive pension benefits or for determining the amount of such benefits.

"(22) The term 'pension benefit' means the aggregate, annual, monthly, or other amounts to which a participant has or will become entitled upon retirement or to which any other person is entitled by virtue of such participant's death.

"(23) The term 'accrued portion of normal retirement

benefit' means that amount of such benefit which, irrespective of whether the right to such benefit is nonforfeitable, is equal to—

"(A) in the case of a profit-sharing-retirement plan or money purchase plan, the total amount credited to the account of a participant;

"(B) in the case of a unit benefit-type pension plan, the benefit units credited to a participant; or

"(C) in the case of other types of pension plans, that portion of the prospective normal retirement benefit of a participant that, pursuant to rule or regulation under the Retirement Income Security for Employees Act, is determined to constitute the participant's accrued portion of the normal retirement benefit under the terms of the appropriate plan.

"(24) The term 'security' means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in, or, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation in, temporary or interim cer-

tificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

"(25) The term 'fiduciary' means any person who exercises any power of control, management, or disposition with respect to any moneys or other property of any employee benefit fund, or has authority or responsibility to do so.

"(26) The term 'market value' or 'value' when used in this Act means fair market value where available, and otherwise the fair value as determined pursuant to rule or regulation under this Act.".

(b) Paragraph (1) of section 3 of such Act is amended by inserting the words "or maintained" after the word "established", by inserting a comma after the word "unemployment", and by adding the following: "or benefits of the type described or permitted by section 302(c) of the Labor Management Relations Act".

(c) Paragraph (2) of section 3 of such Act is amended by inserting the words "or maintained" after the word "established".

(d) Paragraph (3) of section 3 of such Act is amended by striking out the word "plan" the first time it appears and inserting in lieu thereof the word "program".

(e) Paragraphs (3), (4), (6), and (7) of section 3 of such Act are amended by striking out the words "welfare or pension" wherever they appear.

(f) Paragraph (13) of section 3 of such Act is amended to read as follows:

"(13) The term 'party in interest' means as to an employee benefit plan or fund, any administrator, officer, fiduciary, trustee, custodian, counsel, or employee of any employee benefit plan, or a person providing benefit plan services to any such plan, or an employer, any of whose employees are covered by such a plan or any person controlling, controlled by, or under common control with, such employer or officer or employee or agent of such employer or such person, or an employee organization having members covered by such plan, or an officer or employee or agent of such an employee organization, or a relative, partner, or joint venturer or any of the above-described persons. Whenever the term 'party in interest' is used in this Act, it shall mean a person known or should have been known to be a party in interest. If any moneys or other property of an employee benefit fund are invested in shares of an investment company registered under the Investment Company Act of 1940, such investment shall not cause such investment company or such investment company's investment adviser or principal underwriter to be deemed to be a 'fiduciary' or a 'party in interest' as those terms are defined in this Act, except insofar as such investment company or its investment adviser or principal underwriter acts in connection with

an employee benefit fund established or maintained pursuant to an employee benefit plan covering employees of the investment company, the investment adviser, or its principal underwriter. Nothing contained herein shall limit the duties imposed on such investment company, investment adviser, or principal underwriter by any other provision of law.".

(g) Section 4(a) of the Welfare and Pension Plans Disclosure Act is amended by striking out the words "welfare or pension", "or employers", and "or organizations" wherever they appear.

(h) Paragraph (3) of section 4(b) of such Act is amended to read as follows:

"(3) Such plan is administered by a religious organization described under section 501(c) of the Internal Revenue Code of 1954 which is exempt from taxation under the provisions of section 501(a) of such Code;"

(i) Section 4(b)(4) of such Act is repealed.

(j) Section 4(b) of such Act is further amended by adding at the end thereof the following new paragraph:

"(5) Such plan is established or maintained outside the United States primarily for the benefit of employees who are not citizens of the United States and the situs of the employee benefit plan fund established or maintained pursuant to such plan is maintained outside the United States."

(k) Section 5(b) of the Welfare and Pension Plans Disclosure Act is amended to read as follows:

"(b) The Secretary may require the filing of special terminal reports on behalf of an employee benefit plan which is winding up its affairs (whether or not the plan has terminated), including any period during which the plan has moneys or other assets remaining and for one hundred and fifty days thereafter. Such reports may be required to be filed regardless of the number of participants remaining in the plan and shall be in such form and filed in such manner as the Secretary may prescribe."

(l) Section 5 of such Act is further amended by adding at the end thereof the following new subsection:

"(c) The Secretary may by regulation, as to any class or type of employee benefit plans—

"(1) grant an exemption from all or part of the reporting, disclosure, and publication requirements of this Act; or

"(2) provide a variance in the form or manner of reporting, disclosure and publication required by this Act; or both,

if he finds that the exemption or variance is necessary or appropriate and consistent with the purposes of this Act. Any such exemption or variance may be granted on such conditions as the Secretary may deem appropriate. The

Secretary shall prescribe by general rule simplified reports for plans which cover less than 100 participants and which maintain an employee benefit fund with less than $100,000 in assets, except that nothing contained herein shall preclude the Secretary from requiring any information or data from such plans where he finds such data or information necessary to carry out the purposes of this Act nor shall the Secretary be precluded from revoking provisions for simplified forms for any such plan if he finds it necessary to do so in order to carry out the objectives of this Act.".

(m) Section 6 of the Welfare and Pension Plans Disclosure Act is amended to read as follows:

"Sec. 6. (a) A description of any employee benefit plan shall be published as required herein within ninety days after the establishment of such plan or when such plan becomes subject to this Act.

"(b) The description of the plan shall be comprehensive, written in a manner calculated to be understood by the average participant, and shall include the name and type of administration of the plan; the name and address of the administrator; the names and addresses of any person or persons responsible for the management or investment of plan funds; the schedule of benefits; a description of the provisions providing for vested benefits; the source of the financing of the plan and indentity of any organization through which

benefits are provided; whether records of the plan are kept on a calendar year basis, or on a policy or other fiscal year basis, and if on the latter basis, the date of the end of such policy or fiscal year; the procedures to be followed in presenting claims for benefits under the plan and the remedies available under the plan for the redress of claims which are denied in whole or in part. Amendments to the plan reflecting changes in the data and information included in the original plan, other than data and information also required to be included in annual reports under section 7, shall be included in the description on and after the effective date of such amendments. Any change in the information required by this subsection shall be reported in accordance with regulations prescribed by the Secretary.".

(n) Subsection (a) of section 7 of the Welfare and Pension Plans Disclosure Act is amended by adding the number "(1)" after the letter "(a)", and by striking out that part of the first sentence which precedes the word "if" the first time it appears and inserting in lieu therecf the words "An annual report shall be published with respect to any employee benefit plan if the plan provides for an employee benefit fund subject to section 15 of this Act or".

(o) Section 7(a)(1) of such Act is further amended by striking out the word "investigation" and inserting in lieu thereof the words "notice and opportunity to be heard", by

striking out the words "year (or if" and inserting in lieu thereof the words "policy or fiscal year on which", adding a period after the word "kept", and striking out all the words following the word "kept".

(p) Section 7(a) of such Act is further amended by adding the following paragraphs:

"(2) If some or all of the benefits under the plan are provided by an insurance carrier or service or other organization, such carrier or organization shall certify to the administrator of such plan, within one hundred and twenty days after the end of each calendar, policy, or other fiscal year, as the case may be, such information as determined by the Secretary to be necessary to enable such administrator to comply with the requirements of this Act.

"(3) The administrator of an employee benefit plan shall cause an audit to be made annually of the employee benefit fund established in connection with or pusurant to the provisions of the plan. Such audit shall be conducted subject to regulations of the Secretary and in accordance with generally accepted standards of auditing by an independent certified or licensed public accountant, but nothing herein shall be construed to require such an audit of the books or records of any bank, insurance company, or other institution providing insurance, investment, or related function for the plan, if such books or records are subject to pe-

riodic examination by any agency of the Federal Government or the government of any State. The auditor's opinion and comments with respect to the financial information required to be furnished in the annual report by the plan administrator shall form a part of such report.".

(q) Sections 7 (b) and (c) of such Act are amended to read as follows:

"(b) A report under this section shall include—

"(1) the amount contributed by each employer; the amount contributed by the employees; the amount of benefits paid or otherwise furnished; the number of employees covered; a statement of assets, liabilities, receipts, and disbursements of the plan; a detailed statement of the salaries and fees and commissions charged to the plan, to whom paid, in what amount, and for what purposes; the name and address of each fiduciary, his official position with respect to the plan, his relationship to the employer of the employees covered by the plan, or the employee organization, and any other office, position, or employment he holds with any party in interest;

"(2) a schedule of all investments of the fund showing as of the end of the fiscal year:

"(A) the aggregate cost and aggregate value of each security, by issuer,

"(B) the aggregate cost and aggregate value, by type or category, of all other investments, and separately identifying (i) each investment, the value of which exceeds 3 per centum of the value of the fund and (ii) each investment in securities or properties of any person known to be a party in interest;

"(3) a schedule showing the aggregate amount, by type of security, of all purchases, sales, redemptions, and exchanges of securities made during the reporting period; a list of the issuers of such securities; and in addition, a schedule showing, as to each separate transaction with or without respect to securities issued by any person known to be a party in interest, the issuer, the type and class of security, the quantity involved in the transaction, the gross purchase price, and in the case of a sale, redemption, or exchange, the gross and net proceeds (including a description and the value of any consideration other than money) and the net gain or loss, except that such schedule shall not include distribution of stock or other distributions in kind from profit-sharing or similar plans to participants separated from the plan;

"(4) a schedule of purchases, sales, or exchanges during the year covered by the report of investment assets other than securities—

"(A) by type or category of asset the aggregate amount of purchases, sales, and exchanges; the aggregate expenses incurred in connection therewith; and the aggregate net gain (or loss) on sales, and

"(B) for each transaction involving a person known to be a party in interest and for each transaction involving over 3 per centum of the fund, an indication of each asset purchased, sold, or exchanged (and, in the case of fixed assets such as land, buildings, and leaseholds, the location of the asset); purchase or selling price; expenses incurred in connection with the purchase, sale, or exchange; the cost of the asset and the net gain (or loss) on each sale; the identity of the seller in the case of a purchase, or the identity of the purchaser in the case of a sale, and his relationship to the plan, the employer, or any employee organization;

"(5) a schedule of all loans made from the fund during the reporting year or outstanding at the end of the year, and a schedule of principal and interest payments received by the fund during the reporting year, aggregated in each case by type of loan, and in addition, a separate schedule showing as to each loan which—

"(A) was made to a party in interest, or

"(B) was in default, or

"(C) was written off during the year as uncollectable, or

"(D) exceeded 3 per centum of the value of the fund,

the original principal amount of the loan, the amount of principal and interest received during the reporting year, the unpaid balance, the identity and address of the loan obligor, a detailed description of the loan (including date of making and maturity, interest rate, the type and value of collateral, and the material terms), the amount of principal and interest overdue (if any) and as to loans written off as uncollectable an explanation thereof;

"(6) a list of all leases with—

"(A) persons other than parties in interest who are in default, and

"(B) any party in interest,

including information as to the type of property leased (and, in the case of fixed assets such as land, buildings, leaseholds, and so forth, the location of the property), the identify of the lessor or lessee from or to whom the plan is leasing, the relationship of such lessors and lessees, if any, to the plan, the employer, employee organi-

zation, or any other party in interest, the terms of the lease regarding rent, taxes, insurance, repairs, expenses, and renewal options; if property is leased from persons described in (B) the amount of rental and other expenses paid during the reporting year; and if property is leased to persons described in (A) or (B), the date the leased property was purchased and its cost, the date the property was leased and its approximate value at such date, the gross rental receipts during the reporting period, the expenses paid for the leased property during the reporting period, the net receipt from the lease, and with respect to any such leases in default, their identify, the amounts in arrears, and a statement as to what steps have been taken to collect amounts due or otherwise remedy the default;

"(7) a detailed list of purchases, sales, exchanges, or any other transactions with any party in interest made during the year, including information as to the asset involved, the price, any expenses connected with the transaction, the cost of the asset, the proceeds, the net gain or loss, the identity of the other party to the transaction and his relationship to the plan;

"(8) subject to rules of the Secretary designed to preclude the filing of duplicate or unnecessary statements, if some or all of the assets of a plan or plans are

held in a common or collective trust maintained by a bank or similar institution or in a separate account maintained by an insurance carrier, the report shall include a statement of assets and liabilities and a statement of receipts and disbursements of such common or collective trust or separate account and such of the information required under paragraphs (2), (3), (4), (5), (6), and (7) of section 7(b) with respect to such common or collective trust or separate account as the Secretary may determine appropriate by regulation. In such case the bank or similar institution or insurance carrier shall certify to the administrator of such plan or plans, within one hundred and twenty days after the end of each calendar, policy, or other fiscal year, as the case may be, the information determined by the Secretary to be necessary to enable the plan administrator to comply with the requirements of this Act; and

"(9) in addition to reporting the information called for by this subsection, the administrator may elect to furnish other information as to investment or reinvestment of the fund as additional disclosures to the Secretary.

"(c) If the only assets from which claims against an employee benefit plan may be paid are the general assets of the employer or the employee organization, the report shall include (for each of the past five years) the benefits

paid and the average number of employees eligible for participation."

(r) Section 7(d) of such Act is amended by striking out the capital "T" in the word "The" the first time it appears in paragraphs (1) and (2) and inserting in lieu thereof a lowercase "t".

(s) Section 7(e) of such Act is amended to read as follows:

"(e) Every employee pension benefit plan shall include with its annual report (to the extent applicable) the following information:

"(1) the type and basis of funding,

"(2) the number of participants, both retired and nonretired, covered by the plan,

"(3) the amount of all reserves or net assets accumulated under the plan,

"(4) the present value of all liabilities for all nonforfeitable pension benefits and the present value of all other accrued liabilities,

"(5) the ratios of the market value of the reserves and assets described in (3) above to the liabilities described in (4) above,

"(6) a copy of the most recent actuarial report, and

"(A)(i) the actuarial assumptions used in computing the contributions to a trust or payments

under an insurance contract, (ii) the actuarial assumptions used in determining the level of benefits, and (iii) the actuarial assumptions used in connection with the other information required to be furnished under this subsection, insofar as any such actuarial assumptions are not included in the most recent actuarial report,

"(B)(i) if there is no such report, or (ii) if any of the actuarial assumptions employed in the annual report differ from those in the most recent actuarial report, or (iii) if different actuarial assumptions are used for computing contributions or payments than are used for any other purpose, a statement explaining same; and

"(7) such other reasonable information pertinent to disclosure under this subsection as the Secretary may by regulation prescribe."

(t) Section 7 of such Act is further amended by striking out in their entirety subsections (f), (g), and (h).

ANNUAL REPORTS

SEC. 503. (a) Section 8 of the Welfare and Pension Plans Disclosure Act is amended by striking out subsections (a) and (b) in their entirety and by redesignating subsection (c) as subsection (a). The subsection redesignated as subsection (a) is further amended by striking out the words

"of plans" after the word "descriptions", striking out the word "the" before the word "annual" and adding the word "plan" before the word "descriptions".

(b) Such section is further amended by adding subsections (b), (c), (d), and (e), to read as follows:

"(b) The administrator of any employee benefit plan subject to this Act shall file with the Secretary a copy of the plan description and each annual report. The administrator shall also furnish to the Secretary, upon request, any documents relating to the employee benefit plan, including but not limited to the bargaining agreement, trust agreement, contract, or other instrument under which the plan is established or operated, and any document so furnished shall be available for public inspection by the Secretary.

"(c) Publication of the plan descriptions and annual reports required by this Act shall be made to participants and beneficiaries of the particular plan as follows:

"(1) the administrator shall make copies of the plan description (including all amendments or modifications thereto) and the latest annual report and the bargaining agreement, trust agreement contract, or other instrument under which the plan was established or is operated available for examination by any plan participant or beneficiary in the principal office of the administrator;

"(2) the administrator shall furnish to any plan participant or beneficiary so requesting in writing a fair summary of the latest annual report;

"(3) the administrator shall furnish or make available, whichever is most practicable: (1) to every participant upon his enrollment in the plan and within one hundred and twenty days after each major amendment to the plan, a summary of the plan's important provisions, including the names and addresses of any person or persons responsible for the management or investment of plan funds, and requirements of the amendment, whichever is applicable, written in a manner calculated to be understood by the average participant; such explanation shall include a description of the benefits available to the participant under the plan and circumstances which may result in disqualification or ineligibility, and the requirements of the Welfare and Pension Plans Disclosure Act with respect to the availability of copies of the plan bargaining agreement, trust agreement, contract or other instrument under which the plan is established or operated; and (ii) to every participant every three years (commencing January 1, 1975), a revised up-to-date summary of the plan's important provisions and major amendments thereto, written in a manner calculated to be understood by the average participant; and

(iii) to each plan participant or beneficiary so requesting in writing a complete copy of the plan description (including all amendments or modifications thereto) or a complete copy of the latest annual report, or both. He shall in the same way furnish a complete copy of any bargaining agreement, trust agreement, contract, or other instrument under which the plan is established or operated. In accordance with regulations of the Secretary, an administrator may make a reasonable charge to cover the cost of furnishing such complete copies.

"(d) The administrator of an employee pension benefit plan shall furnish to any plan participant or beneficiary so requesting in writing a statement indicating, on the basis of the latest information available, (1) whether or not such person has a nonforfeitable right to a pension benefit, (2) the nonforfeitable pension benefits, if any, which have accrued or the earliest date on which benefits will become nonforfeitable, and (3) the total pension benefits accrued.

"(e) In the event a plan is provided a variance with respect to standards of vesting, funding, or both, pursuant to title II of the Retirement Income Security for Employees Act, the administrator shall furnish or make available, whichever is most practiable, notice of such action to each participant in a manner calculated to be understood by the average

participant, and in such form and detail and for such periods as may be prescribed by the Secretary.".

INVESTIGATIONS

SEC. 504. (a) Section 9(d) of the Welfare and Pension Plans Disclosure Act is amended to read as follows:

"(d) The Secretary may make appropriate investigations when he believes it necessary in order to determine whether any person has violated or is about to violate any provision of this Act or the Welfare and Pension Plans Disclosure Act and in connection therewith he may require the filing of (1) any instruments under which the plan is and has been operated, and (2) supporting schedules of the financial information required to be furnished under either Act and may enter such places, inspect such records and accounts, and question such persons as he may deem necessary to enable him to determine the facts relative to such investigation, except that no periodic examination of the books and records of any plan or fund shall be conducted more than once annually unless the Secretary has reasonable cause to believe there may exist a violation of this Act or any rule or regulation issued thereunder. The Secretary shall make such arrangements as are necessary with the Secretary of the Treasury to preclude a duplication of effort with regard to investigation of violations relating to fiduciaries. For the purposes of any investigation described in this subsection, the

provisions of sections 9 and 10 (relating to the attendance of witnesses and the production of books, records, and documents), of the Federal Trade Commission Act of September 16, 1914 (15 U.S.C. 49, 50), are hereby made applicable to the jurisdiction, powers, and duties of the Secretary or any officer designated by him. To the extent he considers appropriate the Secretary shall delegate his auditing and investigative functions under this section with respect to insured banks acting as fiduciaries of employee benefit plans to the 'appropriate Federal banking agency' as that term is defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)).".

(b) Subsection (h) of section 9 of such Act is repealed and subsection (i) of such section is redesignated as subsection (h).

PUBLIC INFORMATION

SEC. 505. Section 10 of the Welfare and Pension Plan Disclosure Act is amended to read as follows:

"REPORTS MADE PUBLIC INFORMATION: RESEARCH AND STATISTICS

"SEC. 10. (a) The contents of plan descriptions and annual reports filed with the Secretary pursuant to this Act shall be public information and the Secretary may publish any such information and data as he may deem appropriate.

"(b) The Secretary shall develop and maintain a com-

prehensive and effective program of collection, compilation, and analysis of employee benefit plan information and data. Such program shall relate to information and data whether or not required to be furnished by this Act or the Retirement Income Security for Employees Act and to employee benefit plans whether or not subject to these Acts. Moreover the Secretary is authorized and directed to undertake appropriate studies relating to employee benefit plans including, but not limited to, the effects of the Retirement Income Security for Employees Act upon the provisions and costs of pension and profit-sharing retirement plans, the role of private pensions in meeting requirement security needs of the Nation, as well as alternative methods of providing additional retirement security, the administration and operations of pension plans including types and levels of benefits, degree of reciprocity or portability, financial characteristics and practices, methods of encouraging the growth of private pension and profit-sharing retirement plans, and the adequacy of coverage under this Act and the Retirement Income Security for Employees Act. Without limiting the generality of the foregoing, the Secretary shall also undertake a special study of the sufficiency of the provisions of the Retirement Income Security for Employees Act as applied to high mobility employees and shall recommend such changes in existing law and regulations as may be appropriate to afford to such employees

adequate protection against unreasonable forfeiture of pension credits as a result of frequent job changes inherent in the conduct of their occupations or professions, and such other changes as may be appropriate to provide more adequate protection to such employees. In developing such recommendations, the Secretary shall consult with appropriate Federal and State agencies, professional societies, industry and labor representatives, and other professional societies, industry and labor representatives, and other interested groups with specialized knowledge of the problems of high mobility workers. This special study shall be completed and submitted to the Congress within three years after enactment of the amendments to this Act.

"(c) To carry out his duties under this subsection the Secretary may—

"(1) promote, encourage, or directly engage in programs of studies, information, and communication concerning employee benefit plans;

"(2) compile and publish such studies, analyses, reports, and surveys as he may deem appropriate;

"(3) arrange, through grants or contracts for the conduct of such research and investigations as he may deem appropriate;

"(4) make such agreements as are necessary to maintain the confidentiality of the source of any infor-

mation furnished pursuant to a request by the Secretary for use in connection with the collection, compilation, and analysis of employee benefit plan information and data.".

ESTABLISHMENT OF ADVISORY COUNCIL

SEC. 506. Section 14 of such Act is amended to read as follows:

"ADVISORY COUNCIL

"SEC. 14. (a)(1) There is hereby established an Advisory Council on Employee Welfare and Pension Benefit Plans (hereinafter referred to as the 'Council') consisting of twenty-one members appointed by the Secretary. Not more than eleven members of the Council shall be members of the same political party.

"(2) Members shall be appointed from among persons recommended by groups or organizations which they shall represent and shall be persons qualified to appraise the programs instituted under this Act and the Retirement Income Security for Employees Act.

"(3) Of the members appointed, five shall be representatives of labor organizations; five shall be representatives of management; one representative each from the fields of insurance, corporate trust, actuarial counseling, investment counseling, and the accounting field; and six representatives shall be appointed from the general public, three of whom

shall be persons representing those receiving benefits from a private pension plan.

"(4) Members shall serve for terms of three years, except that of those first appointed, six shall be appointed for terms of one year, seven shall be appointed for terms of two years, and eight shall be appointed for terms of three years. A member may be reappointed, and a member appointed to fill a vacancy shall be appointed only for the remainder of such term. A majority of members shall constitute a quorum and action shall be taken only by a majority vote of those present.

"(5) Members shall be paid compensation at the rate of $150 per day when engaged in the actual performance of their duties except that any such member who holds another office or position under the Federal Government shall serve without additional compensation. Any member shall receive travel expenses, including per diem in lieu of subsistence as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

"(b) It shall be the duty of the Council to advise the Secretary with respect to the carrying out of his functions under this Act, and the Retirement Income Security for Employees Act and to submit to the Secretary recommendations with respect thereto. The Council shall meet at least four

times each year and at such other times as the Secretary requests. At the beginning of each regular session of the Congress, the Secretary shall transmit to the Senate and House of Representatives each recommendation which he has received from the Council during the preceding calendar year and a report covering his activities under the Act and the Retirement Income Security for Employees Act for the preceding fiscal year, including full information as to the number of plans and their size, the results of any studies he may have made of such plans and the operation of this Act and the Retirement Income Security for Employees Act and such other information and data as he may deem desirable in connection with employee welfare and pension benefit plans.

"(c) The Secretary shall furnish to the Council an executive secretary and such secretarial, clerical, and other services as are deemed necessary to conduct its business. The Secretary may call upon other agencies of the Government for statistical data, reports, and other information which will assist the Council in the performance of its duties."

ADMINISTRATION

SEC. 507. Section 5108 of title 5, United States Code, is amended by adding at the end thereof the following new subsection:

"(f) In addition to the number of positions authorized by subsection (a), the Secretary of Labor is authorized, without regard to any other provision of this subsection to place a total of 20 positions in the Department of Labor in GS–16 and 17.".

PART B—FIDUCIARY STANDARDS

Subpart I—Fiduciary Standards Under the Welfare and Pension Plans Disclosure Act

AMENDMENT TO THE WELFARE AND PENSION PLANS DISCLOSURE ACT

SEC. 511. The Welfare and Pension Plans Disclosure Act is amended by redesignating sections 15, 16, 17, and 18 as sections 17, 18, 19, and 20, respectively and by inserting immediately after section 14 the following new sections:

"FIDUCIARY STANDARDS

"SEC. 15. (a) Every employee benefit fund established to provide for the payment of benefits under an employee's benefit plan shall be established or maintained pursuant to a duly executed written document which shall set forth the purpose or purposes for which such fund is established and the detailed basis on which payments are to be made into and out of such fund. Such fund shall be deemed to be a trust and shall be held for the exclusive purpose of (1) providing benefits to participants in the plan and their bene-

ficiaries and (2) defraying reasonable expenses of administering the plan.

"(b)(1) A fiduciary shall discharge his duties with respect to the fund—

"(A) with the care under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims; and

"(B) subject to the standards in subsection (a) and in accordance with the documents and instruments governing the fund insofar as is consistent with this Act, except that (i) any assets of the fund remaining upon dissolution or termination of the fund shall, after complete satisfaction of the rights of all beneficiaries to benefits accrued to the date of dissolution or termination, be distributed ratably to the beneficiaries thereof or, if the trust agreement so provides, to the contributors thereto; (ii) that in the case of a registered pension or profit-sharing-retirement plan, such distribution shall be subject to the requirements of the Retirement Income Security for Employees Act; and (iii) any assets of the fund, attributable to employee contributions, remaining after complete satisfaction of the rights of all beneficiaries accrued to the date of dissolution or termination shall be

equitably distributed to the employee contributors according to their rate of contribution.

"(2) A fiduciary is prohibited from engaging in the following transactions:

"(A) holding or purchasing on behalf of the fund any security which has been issued by an empolyer or employer-group whose employees are participants in the plan, under which the fund was established or a corporation controlling, controlled by, or under common control with such employer, or employee-group, if such investment, which when added to such securities already held, exceeds 7 per centum of the fair market value of the assets of the fund. Notwithstanding the foregoing, such 7 per centum limitation shall not apply to profit sharing, stock bonus, thrift and savings or other similar plans which explicitly provide that some or all of the plan funds may be invested in securities of such employer or a corporation controlling, controlled by, or under common control with such employer, nor shall said plans be deemed to be limited by any diversification rule as to plan funds which may be invested in such securities. Profit sharing, stock bonus, thrift, or other similar plans, which are in existence on the date of enactment and which allow investment in such securities without explicit provision in the plan, shall

remain exempt from the 7 per centum limitation until the expiration of one year from the date of enactment of this section. Nothing contained in this subparagraph shall be construed to relieve profit-sharing, stock bonus, thirft and savings or other similar plans from any other applicable requirements of this section. For the purposes of this subparagraph the leasing (or a purchase in connection with such lease) of real property and personal property related to such real property to an employer or employer-group by a plan shall be deemed to be a security of such employer or employer-group;

"(B) any fund other than a profit-sharing, stock bonus, thrift savings plan, etc., holding securities of an employer or employer group which employs participants in such plan, in excess of 7 per centum of the fair market value of such fund on the effective date of this section shall, within 5 years after the effective date of this section, divest not less than 50 per centum of such excess and shall, not later than 10 years after the effective date of this section divest not less than 100 per centum of such excess.

"(3) Except as provided in subsection (c), a fiduciary shall not engage in a transaction with respect to a trust which constitutes a direct or indirect—

"*(A) sale or exchange, or leasing of any property between the trust and a party in interest;*

"*(B) lending of money or other extension of credit between the trust and a party in interest;*

"*(C) furnishing of goods, services, or facilities between the trust and a party in interest;*

"*(D) transfer to, or use by or for the benefit of a party in interest of any assets of the trust;*

"*(E) act by a fiduciary whereby he deals in his own interest for his own account;*

"*(F) receipt by a party in interest from any party dealing with the trust in a transaction involving the trust; or*

"*(G) represent any other party with such fund or in any way act on behalf of a party adverse to the fund or adverse to the interests of its participants or beneficiaries.*

"*(4) The Secretary, in conjunction with the Secretary of the Treasury, shall by rule or regulation provide for the conditional or unconditional exemption of any fiduciary or class of fiduciaries or transactions or class of transactions from all or part of the restrictions imposed by paragraph (3) of this subsection.*

An exemption granted under this section shall not relieve a fiduciary from any other applicable provisions of this Act.

In granting an exemption under this paragraph the Secretaries shall assure that such exemption is (A) administratively feasible, (B) in the interests of the fund, and (C) protective of the rights, both contingent and vested, of participants and beneficiaries of such plan. Prior to the granting of an exemption under this paragraph, the Secretaries shall give adequate notice which shall include publication in the Federal Register, to interested persons, of the pendency of such exemptions.

"(c) The prohibitions provided in subsection (b)(3) shall not apply to—

"(1) any loan made by the trust to parties in interest who are participants or beneficiaries (other than an owner within the meaning of section 401(c)(3) of the Internal Revenue Code of 1954 or a proprietary employee within the meaning of section 412(c)(1) of such Code) of the plan if such loans are (i) available to all such participants on a nondiscriminatory basis, (ii) are not made available to highly compensated employees in an amount greater than that amount made available to other employees, (iii) are made in accordance with specific provisions regarding such loans set forth in the plan, (iv) bear a reasonable rate of interest, and (v) are adequately secured;

"(2) a fiduciary receiving any reasonable compensation for services rendered, or for the reimbursement of expenses properly and actually incurred, in the performance of his duties with the fund, or receiving in a fiduciary capacity proceeds from any transaction involving plan funds, except that no person so serving who is actually receiving full-time compensation from an employer or association of employers whose employees are participants in the plan under which the fund was established, or from an employee organization whose members are participants in such plan shall receive compensation from such fund, except for reimbursement of expenses properly and actually incurred and not otherwise reimbursed;

"(3) the receipt by a fiduciary or other party in interest of any benefit to which he may be entitled as a participant or beneficiary in the plan;

"(4) contracting or making reasonable arrangements with a party in interest for office space and other services necessary for the operation of the plan and paying reasonable compensation therefor;

"(5) following the specific instructions in the trust instrument or other document governing the fund insofar as consistent with the specific prohibitions listed in subsection (b)(3);

"(6) taking action pursuant to an authorization in the trust instrument or other document governing the fund, provided such action is consistent with the provisions of subsection (a) or (b).

"(d) Any fiduciary who breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries by this Act shall be personally liable to such fund for any losses to the fund resulting from such breach, and to pay to such fund any profits which have inured to such fiduciary through use of assets of the fund.

"(e) When two or more fiduciaries undertake jointly the performance of a duty or the excise of a power, or where two or more fiduciaries are required by an instrument governing the fund to undertake jointly the performance of a duty or the exercise of power, but not otherwise, each of such fiduciaries shall have the duty to prevent any other such cofiduciary from committing a breach of responsibility, obligation, or duty of a fiduciary or to compel such other cofiduciary to redress such a breach, except that no fiduciary shall be liable for any consequence of any act or failure to act as a cofiduciary who is undertaking or is required to undertake jointly any duty or power if he shall object in writing to the specific action and promptly file a copy of his objection with the Secretary.

"(f) No fiduciary may be relieved from any responsibility, obligation, or duty imposed by law, by any agreement, or otherwise. Nothing herein shall preclude any agreement allocating specific duties or responsibilities among fiduciaries, or bar any agreement of insurance coverage or indemnification affecting fiduciaries subject to regulations promulgated by the Secretary.

"(g) A fiduciary shall not be liable for a violation of this Act committed before he became a fiduciary or after he ceased to be a fiduciary.

"(h) No fiduciary shall permit any assets of the fund to be held, deposited, or invested outside the United States unless the indicia of ownership remain within the jurisdiction of a United States District Court, except as authorized by the Secretary by rules or regulations.

"(i) Any party in interest who participates in a transaction prohibited by this Act knowingly, or with reason to know that the transaction was a transaction to which this Act applies, shall be personally liable to make good to the fund any losses sustained by the fund resulting from such transaction, and to pay to the fund any profits realized by him from such transaction.

"(j) For the purposes of this section a transfer of real or personal property by a party in interest to a trust to which

the property is subject to a mortgage or similar lien which the trust assumes or if it is subject to a mortgage or similar lien which a party in interest placed on the property within the 10-year period ending on the date of transfer.

"(k) For the purposes of this section the term 'employer-group' means any controlled group of corporations (as defined in section 1563(a) of the Internal Revenue Code of 1954) of which the employer who maintains the plan is a member.

"(l) This section shall not apply to—

"(1) funds held by an insurance carrier unless that carrier holds funds in a separate account,

"(2) funds held by an investment company subject to regulation under the Investment Company Act of 1940,

"(3) a plan administered by the Government of the United States, or by the government of a State or political subdivision thereof, or by an agency or instrumentality of such a government, or

"(4) a plan established or maintained by a church or a convention or association of churches which is exempt from tax under section 501(a) of the Internal Revenue Code of 1954, unless that plan is taxable under chapter 45 of such Code.

"*PROHIBITION OF FIDUCIARY SERVICES*

"SEC. 16. (a) No person who has been convicted of, or has been imprisoned as a result of his conviction of, robbery, bribery, extortion, embezzlement, grand larceny, burglarly, arson, a felony violation of Federal or State law involving substances defined in section 102(6) of the Comprehensive Drug Abuse Prevention and Control Act of 1970, murder, rape, kidnaping, perjury, assault with intent to kill, assault which inflicts grievous bodily injury, any crime described in section 9(a)(1) of the Investment Company Act of 1940 (15 U.S.C. 80a–9(a)(1)), a violation of any provision of this Act, a violation of section 302 of the Labor-Management Relations Act of 1947 (61 Stat. 157, as amended; 29 U.S.C. 186), a violation of chapter 63 of title 18, United States Code, a violation of section 874, 1027, 1503, 1505, 1506, 1510, 1951, or 1954 of title 18, United States Code, a violation of the Labor-Management Reporting and Disclosure Act of 1959 (73 Stat. 519, as amended; 29 U.S.C. 401), or conspiracy to commit any such crimes or attempt to commit any such crimes, or a crime in which any of the foregoing crimes is an element, shall serve—

"(1) as an administrator, officer, trustee, custodian, counsel, agent, employee (other than as an employee performing exclusively clerical or janitorial duties), or fiduciary of any employee benefit plan, or

"(2) as a consultant to any employee benefit plan, during or for five years after a conviction or after the end of an imprisonment for any crime listed in this paragraph, unless prior to the end of such five-year period, in the case of a person so convicted or imprisoned, the Board of Parole of the United States Department of Justice determines that such person's service in any capacity referred to in subparagraph (A) or (B) would not be contrary to the purpose of this Act. Prior to making any such determination the Board shall hold an administrative hearing and shall give notice of such proceedings by certified mail to the State, county, and Federal prosecuting officials in the jurisdiction or jurisdictions in which such person was convicted. The Board's determination in any such proceeding shall be final.

"(b) Any person who willfully violates this section, or knowingly permits another person to violate this section, shall be fined not more than $10,000 or imprisoned for not more than one year, or both.

"(c) For purposes of this section—

"(1) any person shall be deemed to have been 'convicted' and under the disability of 'conviction' from the date of the judgment of the trial court or the date of the final sustaining of such judgment on appeal,

whichever is later, regardless of when such conviction occurred;

"(2) the term 'imprisonment' shall not include any period of parole; and

"(3) 'consultant' means any person who, for pecuniary benefit, direct or indirect, advises or represents an employer benefit plan, concerning the establishment or operation of such plan.".

EFFECTIVE DATES

SEC. 512. The amendments made by part A and subpart I of part B of this title shall be effective January 1, 1974, except for those amendments dealing with prohibited transactions which shall be effective January 1, 1975.

Subpart II—Fiduciary Standards Under the Internal Revenue Code of 1954

SEC. 521. FIDUCIARY STANDARDS.

(a) DUPLICATION OF EFFORT.—In order to avoid unnecessary expense and duplication of functions among Government agencies the Secretary of Labor and the Secretary of the Treasury shall make arrangements or agreements for cooperation and mutual assistance. Any information coming to the attention of the Secretary of the Treasury in the course of his administration of this section which may warrant consideration for criminal prosecution under the

warded to the Secretary of Labor for immediate transmittal to the Attorney General.

(b) Cooperation With Regard to Investigations.—The Secretary of the Treasury shall make such arrangements as are necessary with the Secretary of Labor to preclude a duplication of effort with regard to investigations of violations relating to fiduciaries.

(c) Administration.—

(1) The provisions of subchapter II of chapter 5 of title 5, United States Code, shall apply to this section.

(2) The Secretary of Labor, in conjunction with the Secretary of the Treasury, shall promulgate rules and regulations for the administration and enforcement of this section with regard to prohibited transactions under section 522(d)(1).

SEC. 522. PROHIBITED TRANSACTIONS.

(a) Amendment of Section 503.—Section 503 (relating to requirements for exemption) is amended—

(1) by striking out "or (18)" in subsection (a)(1)(A),

(2) by striking out subsection (a)(1)(B) and by redesignating subsection (a)(1)(C) as (a)(1)(B),

(3) by striking out "or section 401(a)" in subsections (a)(2) and (c),

(4) by striking out subsections (d), (f), and (g) and redesignating subsection (e) as (d).

(b) EXCISE TAX ON PROHIBITED TRANSACTIONS.—Chapter 44 of subtitle D (relating to miscellaneous excise taxes) (as added by section 241 of this Act) is amended by adding at the end thereof the following new section:

"SEC. 4974. EXCISE TAX ON PROHIBITED TRANSACTIONS.

"(a) INITIAL TAXES ON PARTY IN INTEREST.—There is hereby imposed a tax on each prohibited transaction at the rate of 5 percent of the amount involved with respect to the prohibited transaction for each year (or part thereof) in the taxable period. The tax imposed by this paragraph shall be paid by any party in interest who participates in the prohibited transaction.

"(b) ADDITIONAL TAXES ON PARTY IN INTEREST.—In any case in which an initial tax is imposed by subsection (a) on a prohibited transaction and the transaction is not corrected within the correction period, there is hereby imposed a tax equal to 100 percent of the amount involved. The tax imposed by this paragraph shall be paid by any party in interest who participated in the prohibited transaction.

"(c) SPECIAL RULE.—For purposes of subsections (a) and (b) if more than one person is liable under any paragraph of subsection (a) or (b) with respect to any one

prohibited transaction, all such persons shall be jointly and severally liable under such paragraph with respect to such act.

"(d) PROHIBITED TRANSACTION.—

"(1) GENERAL RULE.—For purposes of this section, the term 'prohibited transaction' means a transaction between a party in interest and an employee's trust described in section 401(a), a plan described in section 404(a)(2), or a qualified individual retirement account described in section 408(a), which is exempt from tax under section 501(a) (or which, at any time, has been determined by the Secretary or his delegate to be such a trust, plan, or account) and which constitutes a direct or indirect—

"(A) sale or exchange, or leasing of any property between the trust and a party in interest;

"(B) lending of money or other extension of credit between the trust and a party in interest;

"(C) furnishing of goods, services, or facilities between the trust and a party in interest;

"(D) transfer to, or use by or for the benefit of a party in interest of any assets of the trust;

"(E) act by a party in interest whereby he deals with the assets of the trust in his own interest

"(F) receipt of consideration from any party in interest by any party dealing with the trust in a transaction involving the trust.

"(2) SPECIAL RULES.—For the purposes of paragraph (1)—

"(A) EXEMPTION.—The Secretary, in conjunction with the Secretary of Labor shall by rule or regulation provide for the conditional or unconditional exemption of any fiduciary or class of fiduciaries or transactions or class of transactions from all or part of the restrictions imposed by paragraph (1) of this subsection. An exemption granted under this section shall not relieve a fiduciary from any other applicable provisions of this Act. In granting an exemption under this paragraph, the Secretaries shall assure that such exemption is (i) administratively feasible, (ii) in the interests of the fund, and (iii) protective of the rights, both contingent and vested, of participants and beneficiaries of such plan. Prior to the granting of an exemption under this paragraph, the Secretaries shall give adequate notice to interested persons, which shall include publication in the Federdl Register, of the pendency of such exemptions;

"(B) Encumbered property. A transfer of real or personal property by a party in interest to a trust to which this section applies shall be treated as a sale or exchange if the property is subject to a mortgage or similar lien which the trust assumes or if it is subject to a mortgage or similar lien which a party in interest placed on the property within the 10-year period ending on the date of the transfer;

"(C) Loans to participants.—Any loan made by the trust to parties in interest who are participants or beneficiaries (other than an owner employee within the meaning of section 401(c)(3)) of the qualified plan is not a prohibited transaction if such loans are (i) available to all such participants or beneficiaries on a nondiscriminatory basis, (ii) are not made available to highly compensated employees in an amount greater than that amount made available to other employees, (iii) are made in accordance with specific provisions regarding such loans set forth in the plan, (iv) bear a reasonable rate of interest, and (v) are adequately secured.

"(D) Compensation to fiduciary.—Receiving any reasonable compensation for service rendered, or for the reimbursement of expenses properly

and actually incurred, in the performance of his duties with the fund, or receiving in a fiduciary capacity proceeds from any transaction involving plan funds is not a prohibited transaction except that no person so serving who is actually receiving full-time compensation from an employer or association of employers whose employees are participants in the plan under which the fund was established, or from an employee organization whose members are participants in such plan, shall receive compensation from such fund, except for reimbursement of expenses properly and actually incurred and not otherwise reimbursed.

"(E) LEASE ARRANGEMENTS BETWEEN PLANS AND EMPLOYERS OF PARTICIPANTS.—The leasing (or a purchase in connection with such lease) of real property and personal property related to such real property to an employer or emloyer-group by a pension plan shall not be a prohibited transaction if such agreements do not exceed the limitations imposed by section 15(c)(6)(A) of the Welfare and Pension Plans Disclosure Act. For the purposes of this paragraph the term 'employer-group' means any controlled group or corporation (as de-

fined in section 1563(a)) of which the employer who maintains the plan is a member.

"(F) ACTIONS IN ACCORDANCE WITH GOVERNING DOCUMENT.—It is not a prohibited transaction to—

"(i) contract or make reasonable arrangeents with a party in interest for office space and other services necessary for the operation of the plan and to pay reasonable compensation therefor;

"(ii) follow specific instructions in the trust instrument or other document governing the fund insofar as consistent with the specific prohibitions listed in this section; or

"(iii) take action pursuant to an authorization in the trust instrument or other document governing the fund, provided such action is consistent with the prohibitions of this section.

"(G) FIDUCIARY OR PARTY IN INTEREST AS PARTICIPANTS.—The receipt by a fiduciary or other party in interest of any benefit to which he may be entitled as a participant or beneficiary in the qualified plan is not a prohibited transaction.

"(H) OTHER OFFICES.—It is not a prohibited transaction for a fiduciary to serve as an officer, em-

ployee, agent, or other representative of a party in interest.

"(I) EXCLUSIONS.—A qualified plan or part thereof does not include—

"(i) funds held by an insurance carrier unless that carrier holds the funds in a separate account,

"(ii) funds held by an investment company subject to regulation under the Investment Company Act of 1940,

"(iii) a plan administered by the Government of the United States, or by the government of a State or political subdivision thereof, or by an agency or instrumentality of such a government, or

"(iv) a plan established and maintained by a church or a convention or association of churches which is exempt from tax under section 501(a), unless that plan is taxable under chapter 45 (relating to certain guaranteed benefit plans).

For purposes of this subparagraph, the term 'separate account' means an account established or maintained by an insurance company under which income expenses, gains, and losses (whether or not

realized) from assets allocated to such account are credited or charged against the account in accordance with the applicable contract without regard to other income expenses, gains, or losses of the insurance company.

"(J) DISTRIBUTION TO EMPLOYER.—It is not a prohibited transaction for a fiduciary to make a distribution of the residual assets of the trust in accordance with the terms of the plan, and not in contravention of existing law, to the employer who maintains the plan after all liabilities of the plan with respect to participants and their beneficiaries have been satisfied, except that any assets of the fund attributable to employee contributions, remaining after complete satisfaction of the rights of all beneficiaries accrued to the date of dissolution or termination, shall be equitably distributed to the employee contributors according to their rate of contribution.

"(e) FIDUCIARY AND PARTY IN INTEREST.—

"(1) PARTY IN INTEREST.—For purposes of this section, the term 'party in interest' means, with respect to a qualified plan, a person who is—

"(A) with respect to a particular prohibited

transaction, a fiduciary who benefits from the particular prohibited transaction;

"(B) an administrator, officer, trustee, custodian, counsel of, or person providing benefit plan services to, a qualified plan;

"(C) an employer any of whose employees are covered by such a plan;

"(D) an employee organization any of whose numbers are covered by such a plan;

"(E) an owner, direct or indirect, of 50 percent or more of—

"(i) the combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of a corporation,

"(ii) the capital interest or the profits interest of a partnership, or

"(iii) the beneficial interest of a trust or unincorporated enterprise,

which is an employer or an employee organization described in subparagraph (C), (D);

"(F) a member of the family (as defined in paragraph (5)) of any individual described in subparagraph (A), (B), (C), or (E);

"(G) a corporation, partnership, or trust or estate of which (or in which) 50 percent or more of—

"(i) the combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of such corporation,

"(ii) the capital interest or profit-interest of such partnership, or

"(iii) the beneficial interest of such trust or estate,

is owned directly or indirectly, or held by persons described in subparagraph (A), (B), (C), (D), or (E);

"(H) a corporation which is owned in the manner described in subparagraph (G) by a person who is a person described in subparagraph (E);

"(I) an officer, director (or an individual having powers or responsibilities similar to those of officers or directors), a 10 percent or more shareholder, or a highly compensated employee (earning 10 percent or more of the yearly wages of an employer) of a person described in subparagraph (C), (D), (E), (G), or (H); or

"(J) a 10 percent or more (in capital or profits) partner of a person described in subparagraph (C), (D), (E), (G), or (H).

"(2) FIDUCIARY.—For purposes of this section, the term 'fiduciary' with respect to a qualified plan means—

"(A) any person who—

"(i) exercises any power of control, management or disposition with respect to any moneys or other property of a qualified plan, or

"(ii) has authority or responsibility to exercise such powers,

If any moneys or other property of an employee benefit fund are invested in shares of an investment company registered under the Investment Company Act of 1940, the investment shall not cause that investment company or that investment company's investment adviser or principal underwriter to be treated as a fiduciary or a party in interest for purposes of this section, except when an investment company or its investment adviser or principal underwriter acts in connection with an employee benefit fund established or maintained pursuant to an employee benefit plan covering employees of the investment company, its investment adviser, or its principal underwriter.

"(3) STOCKHOLDINGS.—For purposes of paragraphs (1)(E)(i), (G)(i), and (H), there shall be taken into account indirect stockholdings which would be taken into account under section 267(c), except that, for purposes of this paragraph, section 267(c)(4) shall be treated as providing that the members of the family of an individual are the members within the meaning of paragraph (5).

"(4) PARTNERSHIPS; TRUSTS.—For purposes of paragraphs (1) (E) (ii) and (iii), (G) (ii) and (iii) and (J), the ownership of profits or beneficial interests shall be determined in accordance with the rules for constructive ownership of stock provided in section 267(c) (other than paragraph (3) thereof), except that section 267(c)(4) shall be treated as providing that the members of the family of an individual are the members within the meaning of paragraph (5).

"(5) MEMBER OF FAMILY.—For purposes of paragraph (1)(F), the family of any individual shall include his spouse, ancestor, descendant, brother, sister, son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law.

"(f) OTHER DEFINITIONS.—For purposes of this section—

"(1) Taxable period.—The term 'taxable period' means, with respect to any prohibited transaction, the period beginning with the date on which the prohibited transaction occurs and ending on the earlier of—

"(A) the date of mailing of a notice of deficiency pursuant to section 6212, with respect to the tax imposed by subsection (a), or

"(B) the date on which correction of the prohibited transaction is completed.

"(2) Amount involved.—The term 'amount involved' means, with respect to a prohibited transaction, the greater of the amount of money and the fair market value of the other property given or the amount of money and the fair market value of the other property received; except that, in the case of services described in subparagraph (d)(2) (C) or (D) the amount involved shall be only the excess compensation. For purposes of the preceding sentence, the fair market value—

"(A) in the case of the tax imposed by subsection (a), shall be determined as of the date on which the prohibited transactions occurs; and

"(B) in the case of the tax imposed by subsection (b), shall be the highest fair market value during the correction period.

"(3) CORRECTION.—The terms 'correction' and 'correct' mean, with respect to a prohibited transaction, undoing the transaction to the extent possible, but in any case placing the plan in a financial position not worse than that in which it would be if the prohibited transaction had not occurred.

"(4) CORRECTION PERIOD.—The term 'correction period' means, with respect to a prohibited transaction the period beginning with the date on which the prohibited transaction occurs and ending 90 days after the date of mailing of a notice of deficiency with respect to the tax imposed by subsection (a)(i) under section 6212, extended by—

"(A) any period in which a deficiency cannot be assessed under section 6213(a), and

"(B) any other period which the Secretary or his delegate determines is reasonable and necessary to bring about the correction of the prohibited transaction.".

(c) CLERICAL AMENDMENTS.—

(1) The table of sections for chapter 44 (relating to qualified pension plans), which was added by section 241 of this Act, is amended by adding at the end thereof the following new item:

"Sec. 4974. Excise tax on prohibited transactions.".

(d) *Effective Date.*—*The amendments made by this section shall take effect on January 1, 1975.*

(c) *Savings Provision.*—*Section 4974 of the Internal Revenue Code of 1954 (relating to excise tax on prohibited transactions) shall not apply to—*

(1) a loan of money or other extension of credit between a trust and a party in interest under a binding contract in effect on August 21, 1973 (or pursuant to renewals of such a contract) until August 22, 1983, if such loan or other extension of credit remains at least as favorable to the trust as an arm's-length transaction with an unrelated party would be, and if the execution of the contract, the making of the loan, or the extension of credit was not, at the time of such execution, making, or extension, a prohibited transaction (within the meaning of section 503(b) or the corresponding provisions of prior law);

(2) a lease or joint use of property involving the trust and a party in interest pursuant to a binding contract in effect on August 21, 1973 (or pursuant to renewals of such a contract), until August 22, 1983, if such lease or joint use remains at least as favorable to the trust as an arm's-length transaction with an unrelated party would be and if the execution of the contract was

not, at the time of such execution, a prohibited transaction (within the meaning of section 503(b)) or the corresponding provisions of prior law;

(4) the sale, exchange, or other disposition of property described in paragraph (3) between a trust and a party in interest before August 22, 1983, if—

(A) in the case of a sale, exchange, or other disposition of the property by the trust to the party in interest, the trust receives an amount which equals or exceeds the fair market value of the property at the time of such disposition; and

(B) in the case of the acquisition of the property by the trust, the trust pays an amount which is not in excess of the fair market value of the property at the time of acquisition.

TITLE VI—ENFORCEMENT

PART A—DISPUTES RELATING TO THE QUALIFICATION OF CERTAIN EMPLOYEE PLANS

SEC. 601. TAX COURT PROCEDURE.

(a) IN GENERAL.—Subchapter C of chapter 76 of the Internal Revenue Code of 1954 (relating to the tax court) is amended by adding at the end thereof the following new part:

“PART IV—DECLARATORY JUDGMENTS RELATING TO QUALIFICATION OF CERTAIN EMPLOYEE PLANS

“Sec. 7476. Declaratory judgments.
“Sec. 7477. Procedure.

“SEC. 7476. DECLARATORY JUDGMENTS.

“(a) JURISDICTION.—The United States Tax Court shall have jurisdiction under this part to hear controversies and to enter judgments declaring whether ta plan established by an employer for his employees is a qualified plan as defined in subsection (b). Any such judgment by the Court constitutes its decision in the proceeding and shall be reviewable in the same manner as any other decisions of the Court.

“(b) QUALIFIED PLAN DEFINED.—As used in this part, the term ‘qualified plan’ means—

“(1) a pension, profit sharing, or stock bonus plan described in section 401(a),

“(2) an annuity plan described in section 403(a), or

“(3) a bond purchase plan described in section 405 (a).

“(c) EXHAUSTION OF ADMINISTRATIVE REMEDIES, ETC.—The Tax Court shall not issue a declaratory judgment under this part in any proceeding unless it determines that the petitioner has exhausted administrative remedies avail-

able to him within the Internal Revenue Service and that the plan with respect to which the judgment is sought has been put into effect prior to the commencement of the proceeding before the Tax Court. A plan shall be treated as in effect even though it includes a provision that the funds contributed to it may be refunded in the event the plan is found by the Secretary or his delegate or by the Tax Court not to be a qualified plan.

"(d) COMMISSIONERS.—The chief judge of the Tax Court may assign proceedings under this part to be heard by the commissioners of the court, and the court may authorize a commissioner to enter the decision of the court with respect to such proceeding, subject to such conditions and review as the court may by rule provide.

"SEC. 7477. PROCEDURE.

"(a) RIGHT TO BRING ACTION.—

"(1) ACTIONS BROUGHT BY EMPLOYER OR TRUSTEE; INTERVENTION BY EMPLOYEE.—An action for a declaratory judgment under this part may be brought by an employer who has established a pension, profit sharing, stock bonus, annuity, or bond purchase plan and who has submitted to the Secretary or his delegate a request for a determination that the plan is a qualified plan, that, if amended in accordance with a proposed amendment, it will continue to be a qualified

plan, or that termination of the plan in accordance with a proposed plan of termination will not result in the plan being treated as not a qualified plan for the plan year during which the termination occurs. If such a request was submitted by the trustee of the plan, the action for a declaratory judgment may be brought by the trustee. If the action is brought by the employer or the trustee, an employee of that employer may intervene in the proceeding if—

"(A) he intervened in the proceeding before the Internal Revenue Service relating to the requested determination, or

"(B) the employer or trustee failed to provide notice to employees of the submission of the request for a determination at, or prior to, the time at which the request was submitted to the Secretary or his delegate.

"(2) ACTIONS BROUGHT BY EMPLOYEES; INTERVENTION BY EMPLOYER.—An action for a declaratory judgment with respect to a determination obtained by an employer or by a trustee may also be brought by an individual who was an employee of the employer during the period with respect to which the judgment is sought. In any such action brought by an employee, the employer may intervene.

"*(b) Time for Bringing Action.—*

"*(1) 90-day period.—Except as provided in paragraph (2), an action for declaratory judgment under this part must be commenced within 90 days after the date on which the Secretary or his delegate sends by certified or registered mail his determination with respect to the qualification of the plan to the person requesting such determination.*

"*(2) Failure to issue determinations; extensions of time.—If the Secretary or his delegate fails to issue a determination, an action for a declaratory judgment, a requested determination with respect to the qualification of a pension, profit sharing, stock bonus, annuity, or bond purchase plan, or with respect to a proposed amendment or termination of a qualified plan, within 270 days after the filing with him of the request for such determination, an action for a declaratory judgment under this part may be commenced within 90 days after the expiration of such 270-day period. If, prior to the expiration of such 270-day period, the Secretary or his delegate and the person requesting the determination consent in writing to an extension of such period, the 90-day period for commencing an action shall not begin to run until the expiration of the extended period agreed to by the parties.*

"(c) BURDEN OF PROOF.—The person bringing an action for declaratory judgment under this part shall have the burden of proof with respect to any ground which was set forth in the determination by the Secretary or his delegate in such manner as to inform the person adequately of the reasons for the determination. The Secretary or his delegate shall have the burden of proof with respect to any ground on which he relies in the proceeding for a declaratory judgment and which was not set forth in his determination in such manner. If the Secretary or his delegate did not issue a determination, he shall have the burden of proof with respect to any ground on which he relies in a proceeding under this part.".

(b) TECHNICAL AMENDMENTS.—

(1) FEE FOR FILING PETITION.—Section 7451 (relating to fee for filing petition) is amended by striking out "deficiency" and inserting in lieu thereof "deficiency or for a declaratory judgment under part IV of this subchapter".

(2) DATE OF DECISION.—Section 7459(c) (relating to date of decision) is amended by inserting before the period at the end of the first sentence the following: "or, in the case of a declaratory judgment proceeding under part IV of this subchapter, the date specified by the Tax Court in its decision".

(3) Venue for appeal of decision.—Section 7482(b)(1) (relating to venue) is amended by adding at the end thereof the following new sentence: "In the case of a declaratory judgment of the Tax Court, the rules of this paragraph shall be applied with respect to the employer.".

(c) Clerical Amendment.—The table of parts for subchapter C of chapter 76 is amended by adding at the end thereof the following new item:

"Part IV. Declaratory judgments relating to qualification of certain employee plans.".

(d) Effective Date.—The amendments made by this section shall take effect on January 1, 1975.

PART B—AUDITING; ETC.

SEC. 641. EXCISE TAX FOR AUDITING; ETC.

(a) Annual Tax on Plan Participation.—Chapter 44 (relating to qualified pension plans) which was added by section 241 of this Act is amended by adding at the end thereof the following new section:

"SEC. 4975. ANNUAL TAX ON PLAN PARTICIPATION.

"(a) General Rule.—For the calendar year beginning on January 1, 1974, and each calendar year thereafter, there is hereby imposed a tax equal to $1 per participant under a plan established by the employer which is—

"(1) a pension, profit sharing, or stock bonus plan described in section 401(a),

"(2) an annuity plan described in section 403(a), or

"(3) a bond purchase plan described in section 405(a).

"(b) BY WHOM PAID.—The tax imposed by this section shall be paid by the employer of such participant under such plan.

"(c) SPECIAL RULES.—

"(1) The tax imposed by subsection (a) shall not apply to participants under a plan established and maintained by the United States; a State or political subdivision thereof; or a corporation which is an instrumentality of the United States, a State or political subdivision thereof.

"(2) In the case of a plan which is established pursuant to an agreement which the Secretary or his delegate determines to be a collective-bargaining agreement, see section 413.

"(3) For purposes of this section, a plan established by the employer includes a plan established by a predecessor of the employer.

"(d) DEFINITION OF PARTICIPANT.—For purposes of this section, the term 'participant' means an individual who is—

"(1) actively employed by the employer at any time during the calendar year.

"(2) entitled to make contributions to or to have amounts contributed to or under the plan on his behalf by the employer, and

"(3) not currently receiving benefits under the plan.

"(e) REGULATIONS.—The Secretary or his delegate may prescribe such regulations as may be necessary to carry out the provisions of this section.

"(f) CROSS REFERENCE.—

"For disallowance of taxes paid under this section as a deduction, see section 275.".

(b) CLERICAL AMENDMENT.—The table of sections of chapter 44 (relating to qualified pension plans) which was added by section 241 of this Act is amended by adding at the end thereof the following new item:

"Sec. 4974. Annual tax on plan participation.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to calendar years beginning after December 31, 1973.

PART C—ACTUARIES

SEC. 671. ENROLLMENT AND REPORTS OF ACTUARIES.

(a) REPORTS, STATEMENTS, AND NOTICES BY ACTUARIES.—Part III of chapter 61 (relating to information and returns) is amended by inserting at the end thereof the following new subpart:

"Subpart E—Reports, Statements, and Notices by Actuaries

"Sec. 6058. Periodic report and statement of actuary.

"SEC. 6058. PERIODIC REPORT AND STATEMENT OF ACTUARY.

"(a) General Rule.—The actuarial report described in subsection (b) shall be filed by the plan administrator (as defined in section 3(15) of the Welfare and Pension Plans Disclosure Act) with respect to each defined benefit plan to which section 4971(e) does not apply, for the first plan year for which this section applies to the plan and each third plan year thereatfer (or more frequently if the Secretary or his delegate determines that more frequent reports or statements are necessary).

"(b) Actuarial Report.—The actuarial report of a plan required by subsection (a) shall be prepared by an enrolled actuary (within the meaning of section 7517) and shall contain—

"(1) a description of the plan,

"(2) a description of the funding method and actuarial assumptions used to determine costs under the plan,

"(3) a certification that the funding standard account required under section 4971(b)(1) has been

maintained during the period to which the report relates,

"(4) such other information regarding the plan as the Secretary or his delegate may by regulations require, and

"(5) a statement—

"(A) that to the best of his knowledge the report is complete and accurate, and

"(B) of his opinion regarding the reasonableness of the funding method and actuarial assumptions used to determine the normal costs of the plan.

"(c) TIME AND MANNER OF FILING.—The actuarial report and statement required by subsection (a) shall be filed at the time and in the manner provided by regulations prescribed by the Secretary or his delegate."

(b) ASSESSABLE PENALTIES.—Subchapter B of chapter 69 (relating to assessable penalties) is amended by adding at the end thereof the following new section:

"SEC. 6692. FAILURE TO FILE ACTUARIAL NOTICE, REPORT, OR STATEMENT.

"The plan administrator (as defined in section 3(15) of the Welfare and Pension Plans Disclosure Act) of a defined benefit plan to which section 6058 applies who fails to file the report or statement required by that section at the time and in the manner required by that section, shall pay

a penalty of not to exceed $1,000 for each such failure unless it is shown that such failure is due to reasonable cause.".

(c) Enrollment of Actuaries.—Chapter 77 (relating to miscellaneous provisions) is amended by inserting at the end thereof the following new section:

"SEC. 7517. ENROLLMENT OF ACTUARIES.

"The Secretary or his delegate shall, by regulations, establish reasonable standards and qualifications for persons performing actuarial services described in section 6058 and shall enroll persons found by the Secretary or his delegate to satisfy such standards and qualifications. The Secretary or his delegate may, after notice and an opportunity for a hearing, suspend or terminate the enrollment of an actuary under this section if the Secretary or his delegate finds that the actuary has not satisfied requirements for enrollment. For purposes of this title, the term 'enrolled actuary' means a person who is enrolled by the Secretary or his delegate pursuant to this section."

(d) Clerical Amendments.—

(1) The table of subparts for part III of chapter 61 is amended by inserting at the end thereof the following new item:

"Subpart E—Reports, statements, and notices by actuaries.".

(2) The table of sections for subchapter B of chapter 68 is amended by inserting at the end thereof the following new item:

"Sec. 6692. Failure to file actuarial notice, report, or statement.".

(3) The table of sections for chapter 77 is amended by inserting at the end thereof the following new item:

"Sec. 7517. Enrollment of actuaries.".

(c) Effective Dates.—

(1) The amendments made by subsections (a) and (b) shall apply for plan years beginning on or after January 1, 1976.

(2) The amendments made by subsections (c) and (d) shall take effect on the date of enactment of this Act.

PART D—ENFORCEMENT; RESOLUTION OF DISPUTES GENERALLY

SEC. 691. ARBITRATION; CIVIL ACTIONS BY PARTICIPANTS AND BENEFICIARIES.

(a) Arbitration Procedure.—Each employee pension benefit plan subject to this part shall provide—

(1) a procedure for the fair and just review under the plan of any dispute between the administrator of the plan and any participant or beneficiary of the plan, and

(2) an opportunity, after such review and a decision by the administrator (or a failure to make a deci-

sion within a reasonable period of time by the administrator), for the arbitration of such disputes.

(b) Civil Actions.—A participant or beneficiary of such a plan may bring a civil action in accordance with the provisions of section 693 of this Act in lieu of submitting the dispute to arbitration under the plan.

(c) Alternative Procedures.—If a dispute under a plan is subject to procedures established by collective bargaining for the resolution of such dispute, the Secretary of Labor, upon written request by a plan administrator, may waive the application of subsections (a), (b), and (e) to such dispute if he determines that the procedures provided for are reasonably fair and effective.

(d) Application of Law Relating to Section 301 of Labor Management Relations Act, 1947.—The arbitration of disputes in accordance with the requirements of this section, and judicial proceedings relating thereto, shall be governed by the laws, decisions, and rules applicable to the arbitration of disputes under section 301 of the Labor Management Relations Act, 1947.

(e) Payment of Arbitration Costs.—The cost of any arbitration proceedings required under this section (including arbitrators' fees) shall be paid by the plan under which the dispute arises, unless the arbitrator determines

that a participant's or beneficiary's allegations are frivolous and assesses all or a portion of such cost to that party.

(f) INFORMATION AND ASSISTANCE.—The Secretary shall inform participants and their beneficiaries under plans to which this part applies of their rights under this part. The Secretary is authorized to furnish assistance to such participants and their beneficiaries in obtaining such rights.

(g) The Secretary shall prescribe rules and regulations necessary to carry out this section.

SEC. 692. CIVIL ACTIONS BY SECRETARY OF LABOR.

Whenever the Secretary believes that an employees' benefit fund is being or has been administered in violation of the requirements of the Welfare and Pension Plans Disclosure Act and the Retirement Income Security for Employees Act or the documents governing the establishment or operation of the fund, the Secretary may petition any district court of the United States having jurisdiction of the parties or the United States District Court for the District of Columbia for an order (1) requiring return to such fund of assets transferred from such fund in violation of the requirements of such Act, (2) requiring payment of benefits denied to any participant or beneficiary due to violation of the requirements of such Act, or of the requirements of this Act and the Retirement Income Security for Employees Act, and (3)

restraining any conduct in violation of the fiduciary requirements of such Act, or of this Act, and granting such other relief as may be appropriate to effectuate the purposes of this Act, including but not limited to, removal of a fiduciary who has failed to carry out his duties and the removal of any person who is serving in violation of the requirements of section 16(h) of the Welfare and Pension Plans Disclosure Act and the Retirement Income Security for Employees Act.

SEC. 693. ACTIONS TO REDRESS OR RESTRAIN VIOLATIONS OF FIDUCIARY DUTY.

Civil actions for appropriate relief, legal or equitable, to redress or restrain a breach of any responsibility, obligation, or duty of a fiduciary, including but not limited to, the removal of a fiduciary who has failed to carry out his duties and the removal of any person who is serving in violation of the requirements of section 15(h) of the Welfare and Pension Plans Disclosure Act or against any person who has transferred or received any of the assets of a plan or fund in violation of the fiduciary requirements of the Welfare and Pension Plans Disclosure Act or in violation of the document or documents governing the establishment or operation of the fund, may be brought by any participant or beneficiary of any employee benefit plan or fund subject to the Welfare and Pension Plans Disclosure Act in any court of

competent jurisdiction, State or Federal, or the United States District Court for the District of Columbia, without respect to the amount in controversy and without regard to the citizenship of the parties. Where such action is brought in a district court of the United States, it may be brought in the district where the plan is administered, where the breach took place, or where a defendant resides or may be found, and process may be served in any other district where a defendant resides or may be found. Such actions may also be brought by a participant or beneficiary as a representative party on behalf of all participants or beneficiaries similarly situated. In all civil actions authorized by this Act or the Welfare and Pension Plans Disclosure Act, attorneys appointed by the Secretary shall represent the Secretary except as provided in section 518(a) of title 28, United States Code (relating to litigation before the Supreme Court of the United States).

SEC. 694. JURISDICTION OF COURTS.

Suits by a participant or beneficiary for benefits from an employee benefit plan or fund, subject to the Welfare and Pension Plans Disclosure Act, may be brought in any court of competent jurisdiction, State or Federal, or the United States District Court for the District of Columbia, without respect to the amount in controversy and without regard to the citizenship of the parties, against any such plan or fund

to recover benefits due him required to be paid from such plan or fund pursuant to the document or documents governing the establishment or operation of the plan or fund, or to clarify his rights to future benefits under the terms of the plan. Where such action is brought in a district court of the United States, it may be brought in the district where the plan is administered, or where a defendant resides or may be found, and process may be served in any other district where a defendant resides or may be found. Such actions may also be brought by a participant or beneficiary as a representative party on behalf of all participants or beneficiaries similarly situated.

SEC. 695. PROCEDURE.

(a) SERVICE.—The jurisdiction of any court competent to hear an action brought by a participant or beneficiary under section 693 or 694 shall be conditioned upon the service of a copy of the complaint upon the Secretary by certified mail, who shall have the right in his discretion to intervene in the action.

(b) REMOVAL.—Notwithstanding any other law, the Secretary shall have the right to remove an action brought under section 693 or 694 from a State court to a district court of the United States, if the action is one seeking relief of the kind the Secretary is authorized to sue for under this Act. Any such removal shall be prior to the trial of the action

and shall be to a district court where the Secretary could have initiated the action.

SEC. 696. APPLICATION OF ACT OF MARCH 23, 1932.

The provisions of the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes", approved March 23, 1932, shall not be applicable with respect to suits brought under this title.

SEC. 697. ACTIONS BROUGHT BY ADMINISTRATOR OR FIDUCIARY AGAINST SECRETARY.

Suits by an administrator or fiduciary of an employee benefit plan subject to this Act or the Welfare and Pension Plans Disclosure Act, to review a final order of the Secretary, to restrain the Secretary from taking any action contrary to the provisions of such Acts, or to compel action required under this Act, may be brought in the name of the plan or fund in the district court of the United States for the district where the fund has its principal office, or in the United States District Court for the District of Columbia.

SEC. 698. STATUTE OF LIMITATIONS.

Any action, suit, or proceeding based upon a violation of this Act or the Welfare and Pension Plans Disclosure Act shall be commenced within five years after the violation occurs. In the case of fraud or concealment, such action, suit,

or proceeding shall be commenced within five years of the date of discovery of such violation.

SEC. 699. RELATIONSHIP TO STATE LAWS.

(a) PRE-EMPTION OF STATE LAWS.—It is hereby declared to be the express intent of Congress that, except for actions authorized by section 694 of this title, the provisions of this Act or the Welfare and Pension Plans Disclosure Act shall supersede any and all laws of the States and of political subdivisions thereof insofar as they may now or hereafter relate to the subject matters regulated by this Act or the Welfare and Pension Plans Disclosure Act, except that nothing herein shall be construed—

(1) to exempt or relieve any employee benefit plan not subject to this Act or the Welfare and Pension Plans Disclosure Act from any law of any State;

(2) to exempt or relieve any person from any law of any State which regulates insurance, banking, or securities or to prohibit a State from requiring that there be filed with a State agency copies of reports required by this Act to be filed with the Secretary; or

(3) to alter, amend, modify, invalidate, impair, or supersede any law of the United States other than the Welfare and Pension Plans Disclosure Act or any rule or regulation issued under any law except as specifically provided in this Act.

(b) JURISDICTION OF STATE COURTS.—Subsection (a) of this section shall not be deemed to prevent any State court from asserting jurisdiction in any action requiring or permitting an accounting by a fiduciary during the operation of an employee benefit fund subject to the Welfare and Pension Plans Disclosure Act or upon the termination thereof or from asserting jurisdiction in any action by a fiduciary requesting instructions from the court or seeking an interpretation of the trust instrument or other document governing the fund. In any such action—

(1) the provisions of this Act and the Welfare and Pension Plans Disclosure Act shall supersede any and all laws of the State and of political subdivisions thereof, insofar as they may now or hereafter relate to the fiduciary, reporting, and disclosure responsibilities of persons acting for or on behalf of employee benefit plans or on behalf of employee benefit funds subject to the Welfare and Pension Plans Disclosure Act except insofar as they may relate to the amount of benefits due beneficiaries under the terms of the plan;

(2) notwithstanding any other law, the Secretary or, in the absence of action by the Secretary, a participant or beneficiary of the employee benefit plan or fund

affected by this subsection, shall have the right to remove such action from a State court to a district court of the United States if the action involves an interpretation of the fiduciary, or reporting, and disclosure responsibilities of persons acting on behalf of employee benefit plans subject to the Welfare and Pension Plans Disclosure Act;

(3) the jurisdiction of the State court shall be conditioned upon—

(A) written notification, sent to the Secretary by certified mail at the time such action is filed, identifying the parties to the action, the nature of the action, and the plan involved; and satisfactory evidence presented to the court that the participants and beneficiaries have been adequately notified with respect to the action; and

(B) the right of the Secretary or of a participant or beneficiary to intervene in the action as an interested party.

SEC. 699A. RECRIMINATION AGAINST EMPLOYEES AND OTHER PERSONS.

It shall be unlawful for any person to discharge, fine, suspend, expel, discipline, or discriminate against a partici-

pant or beneficiary for exercising any right to which he is entitled under the provisions of the plan, this Act, or the Welfare and Pension Plans Disclosure Act, or for the purpose of interfering with the attainment of any right to which such participant may become entitled under the plan, this Act, or the Welfare and Pension Plans Disclosure Act. It shall be unlawful for any person to discharge, fine, suspend, expel, or discriminate against any person because he has given information or has testified or is about to testify in any inquiry or proceeding relating to this Act or the Welfare and Pension Plans Disclosure Act. The provisions of sections 692 and 693 shall be applicable in the enforcement of this section.

SEC. 699B. INTERFERENCE WITH RIGHTS.

It shall be unlawful for any person through the use of fraud, force, violence, or threat of the use of force or violence, to restrain, coerce, intimidate, or attempt to restrain, coerce, or intimidate any participant or beneficiary for the purpose of interfering with or preventing the exercise of any right to which he is or may become entitled under the plan, this Act, or the Welfare and Pension Plans Disclosure Act. Any person who willfully violates this section shall be fined $10,000 or imprisoned for not more than one year, or both.

TITLE VII—RETIREMENT SAVINGS; LIMITATION ON PROPRIETARY EMPLOYEE CONTRIBUTIONS; TAXATION OF CERTAIN LUMP-SUM DISTRIBUTIONS

SEC. 701. DEDUCTION FOR RETIREMENT SAVINGS.

(a) IN GENERAL.—Part VII of subchapter B of chapter 1 (relating to additional itemized deductions for individuals) is amended by redesignating section 219 as 220 and inserting after section 218 the following new section:

"SEC. 219. RETIREMENT SAVINGS.

"(a) DEDUCTION ALLOWED.—Subject to the limitations imposed by subsections (b) and (c), in the case of an individual, there shall be allowed as a deduction amounts paid in money during the taxable year by such individual for his benefit—

"(1) to or under a qualified individual retirement account described in section 408(a) which is exempt from tax under section 501(a), or

"(2) for a qualified individual retirement bond purchase described in section 409, unless the bond is redeemed within 12 months after its issuance and no in-

terest is payable on account of the application of section 409(b)(1)(D)(iii).

"(b) LIMITATIONS.—

"(1) GENERAL RULE.—Except as provided in paragraphs (2) and (3), the amount allowable as a deduction under subsection (a) to an individual for any taxable year shall not be less than the lesser of his earned income paid or accrued for such taxable year up to a deduction of $1,000, nor more than 15 per centum of his earned income paid or accrued for such taxable year, up to a deduction of $1,500.

"(2) PARTICIPATION IN CERTAIN OTHER PLANS.—No deduction shall be allowed under this section for the individual's taxable year if, at any time during such taxable year, he is an active participant in—

"(A) an employees' trust described in section 401(a) which is exempt from tax under section 501(a),

"(B) a plan which meets the requirements of section 404(a)(2),

"(C) a qualified bond purchase plan described in section 405(a),

"(D) an annuity plan described in section 403(b), or

"(E) a plan established and maintained by the United States, a State or political subdivision thereof, or a corporation which is an instrumentality of the United States, a State, or a political subdivision of a State.

"(3) REDUCTION FOR CERTAIN EMPLOYER ACCOUNTS.—If an individual is a participant in an account described in section 408(a)(8) for the taxable year, the amount of the limitation otherwise determined under paragraph (1) of this subsection for such year shall be reduced by an amount equal to the employer contributions to such account for such year. If an individual is a participant in such an account for less than his entire taxable year, the amount of the deduction allowable under this section to him for such year shall be reduced by the sum of any amounts allowed as a deduction to the individual for his contributions to such account, and the amount of the reduction determined under this paragraph.

"(4) CONTRIBUTIONS MADE AFTER AGE $70\frac{1}{2}$ YEARS.—No deduction shall be allowed under this section with respect to any payment described in subsection (a) which is made by an individual who attains the age of $70\frac{1}{2}$ years before the end of the taxable year of such payment.

"(c) Recontributed Amounts.—No deduction shall be allowed under this section with respect to a contribution to which section 72(p)(2)(C) applies.

"(d) Married Individuals.—In the case of a married individual (as defined in section 153), the amount determined under subsection (b)(1) shall be determined without regard to the earned income of his spouse. For purposes of this section, the earned income of, and payments by, a married individual shall be determined without regard to the community property laws of a State.

"(e) Earned Income Defined.—For purposes of this section, the term 'earned income' means any income which is earned income within the meaning of section 401(c)(2) or 911(b)."

(b) Individual Retirement Accounts.—Subpart A of part I of subchapter D of chapter 1 (relating to general rules) is amended by adding at the end thereof the following new section:

"SEC. 408. INDIVIDUAL RETIREMENT ACCOUNTS.

"(a) Requirements for Qualification.—A trust created or organized in the United States shall constitute a qualified individual retirement account under this section provided that under a written governing instrument—

"(1) it is maintained for the purpose of distributing

the contributions thereto and the income therefrom to a specific individual or his beneficiaries;

"(2) except in the case of a contribution to which section 72(p)(2)(C) applies, contributions thereto during any taxable year may not exceed the excess of—

"(A) the limitation provided by section 219 (b) (plus any amounts contributed by an employer to an account described in paragraph (8) for such taxable year), over

"(B) the sum of the amounts paid by such individual during such year—

"(i) for a qualified individual retirement bond purchase described in section 409, for his benefit, or

"(ii) under another qualified individual retirement account,

and, except as provided in subsection (b)(3), may be made only by the individual for whose benefit the account is maintained;

"(3) the assets thereof may not be commingled with other property except in a common trust fund or in the case of accounts maintained by an employer for his employees;

"(4) the assets thereof are required to be held by a bank (as defined in section 401(d)(1)) or other per-

son who demonstrates to the satisfaction of the Secretary or his delegate that the manner in which such other person will hold such assets will be consistent with the requirements of this section;

"(5) the entire interest of the individual for whose benefit the account is maintained will be distributed to him not later than his taxable year in which he attains the age 70½ years, or will be distributed, commencing not later than such taxable year, in accordance with regulations prescribed by the Secretary or his delegate, over—

"(A) the life of such individual or the lives of such individual and his spouse, or

"(B) a period not extending beyond the life expectancy of such individual or the life expectancy of such individual and his spouse;

"(6) if the individual for whose benefit the account is maintained dies before his entire interest has been distributed to him, or if distribution has been commenced in accordance with paragraph (5) to his surviving spouse and such surviving spouse dies before the entire interest has been distributed to such surviving spouse, the entire interest (or the remaining part of such interest if distribution thereof has commended) will, within 5 years after his death (or the death of his surviving spouse), be distributed, or applied to the pur-

chase of an immediate annuity for his beneficiary or beneficiaries (or the beneficiary or beneficiaries of his surviving spouse) which will be payable for the life of such beneficiary or beneficiaries (or for a term certain not extending beyond the life expectancy of such beneficiary or beneficiaries) and which will be immediately distributed to such beneficiary or beneficiaries;

"(7) if contributions thereto may be used for the purchase of an annuity or similar contract issued by a life insurance company, any refunds of premiums are applied within the current taxable year or next succeeding taxable year toward the payment of future premiums or the purchase of additional benefits; and

"(8) in the case of an account to which an employer contributes the additional requirements of subsection (b)(3) are met.

For purposes of this title, a custodial account, annuity contract, or other similar arrangement shall be treated as a trust constituting a qualified individual retirement account of such arrangement would, except for the fact that it is not a trust, constitute a qualified individual retirement account under this subsection. Paragraph (6) shall not apply if distribution of the interest of such individuals have commenced and such distribution is for a term certain over a period permitted under paragraph (5).

"(b) SPECIAL RULES.—

"(1) EXCESS CONTRIBUTIONS.—If all or a portion of the contributions paid by an individual during any taxable year to a qualified individual retirement account are not deductible under section 219 (other than by reason of section 219(c)), such contributions or portions thereof shall be treated in the same manner as an excess contribution within the meaning of section 401(e)(1), and, for this purpose, section 401(e)(2) and (3) shall apply as if such individual were an owner-employee.

"(2) COMMUNITY PROPERTY LAWS.—This section shall be applied without regard to the community property laws of any State.

"(3) EMPLOYER CONTRIBUTIONS.—An employer may maintain and may contribute to qualified individual retirement accounts for his employees if, with respect to each employee's account for such employee's taxable year—

"(A) the employee is not an active participant in another trust or plan of such employer which is qualified under section 401(a), 404(a)(2), or 405(a),

"(B) the aggregate employer and employee

contributions with respect to such account do not exceed $1,000,

"(C) the interest of such employee in such account is nonforfeitable, and

"(D) separate records are maintained for employer and employee contributions.

An account described in this paragraph shall satisfy the requirements of subsection (a) with respect to each individual who participates and shall be treated as such individual's separate account, except that the employer may pay reasonable administrative expenses. In determining the deductibility of employer contributions satisfying the requirements of this paragraph, the limitations under section 404 shall not apply; however, any amount contributed by an employer to such an account during the employee's taxable year for whom the account is maintained in excess of the limitation contained in subparagraph (C) shall not be deductible, but shall be withdrawn from the account by the employer before the end of the taxable year of the employer during which it was made, or carried over to the succeeding taxable year of the employer, during which year it shall be deductible to the extent that a contribution during that year of such excess amount is deductible. Contributions made by an

employer to such an account shall be taxable to the participant only as provided by this section.

"(4) TRANSFER OF ACCOUNT INCIDENT TO DIVORCE.—The transfer of an individual's interest in a qualified individual retirement account to his former spouse under a divorce decree or under a written instrument incident to such divorce shall be deemed not to be a taxable transfer by such individual notwithstanding any other provision of this subtitle, and such interest at the time of the transfer shall be deemed to be a qualified individual retirement account of such spouse, and not of such individual. The basis of such account to such spouse at such time shall be deemed to be the same as the individual's basis at such time. Thereafter such account for purposes of this subtitle shall be treated as maintained for the benefit of such spouse.

"(c) TREATMENT AS QUALIFIED TRUST BENEFITING OWNER-EMPLOYEE.—Solely for purposes of subchapter F, chapter 44, and subtitle F, a qualified individual retirement account shall be treated as a trust described in section 401(a) which is part of a plan providing contributions or benefits for employees some or all of whom are owner-employees (as defined in section 401(c)(3)), the individual for whose benefit such account is maintained shall be treated as an owner-employee for whom such contributions or benefits are

provided, and the person holding the assets of such qualified individual retirement account shall be treated as the trustee of such trust. If section 72(p)(2)(C) applies to a contribution to a qualified individual retirement account, chapter 44 shall not be applied to such contribution.

"(d) TAXABILITY OF BENEFICIARY OF QUALIFIED INDIVIDUAL RETIREMENT ACCOUNT.—

"(1) IN GENERAL.—*Except as provided in paragraphs (2) and (3), the amount actually paid, distributed, or made available to any payee or distributee by a qualified individual retirement account shall be taxable to him in the year in which actually paid or distributed under section 72 (relating to annuities).*

"(2) RECONTRIBUTED AMOUNTS.—*Amounts paid or distributed by a qualified individual retirement account (except amounts distributed pursuant to provisions of the governing instrument, and meeting the requirements of subsection (a)(5)) shall not be includible in gross income in the year paid or distributed to the extent that such amounts are not subject to the tax imposed by section 72(p)(3) by reason of the application of section 72(p)(2)(C).*

"(3) APPLICABILITY OF SECTION 72(m).—*Under regulations prescribed by the Secretary or his delegate, an individual who establishes a qualified individual re-*

tirement account shall be treated as an employee who is an owner-employee for purposes of applying paragraphs (2) and (4) of section 72(m) (relating to special rules applicable to employee annuities and distributions under employee plans).

"(e) Treatment of Nonqualified or Nonexempt Account.—If for the preceding taxable year of a trust it was described in subsection (a) and was exempt from tax under section 501(a) and if for the taxable year such trust is not exempt from tax under section 501(a), the fair market value of the account at the beginning of the taxable year, reduced by any contributions of the individual who established such account which were not deductible under section 219 (other than by reason of section 219(c)), shall be included in the gross income of the individual who established such account or his beneficiary as if the assets of the trust had been distributed to him on the first day of the taxable year.

"(f) Special Rule.—Solely for the purpose of determining whether section 72(p)(2)(C) applies to a contribution under subsection (a)(2) or to an amount paid or distributed under subsection (d)(2), the requirement of section 72(p)(1) that the amount paid or distributed be received before age 59½ shall not apply.

"(g) Cross References.—

"(1) For excise tax on a qualified individual retirement account, see section 4960.

"(2) For additional tax on certain distributions from a qualified individual retirement account, see section 72(p)."

(c) Treatment of Distribution From Individual Retirement Accounts.—Section 72 (relating to annuities) is amended—

(1) by striking out subsection (m)(1),

(2) by inserting after "section 401(c)(1)" in subsection (m)(2) ", or under section 219",

(3) by striking out at the end of subsection (m)(3)(A)(i) "or",

(4) by striking out at the end of subsection (m)(3)(A)(ii) "participant." and inserting in lieu thereof "participant, or",

(5) by inserting after subsection (m)(3)(A)(ii) the following new clause—

"(iii) purchased by a trust described in section 408(a) which is exempt from tax under section 501(a).",

(6) by striking out subsection (m)(3)(B) and inserting in lieu thereof:

"(B) Any contribution to a plan described in subparagraph (A)(i) or a trust described in subparagraph (A) (ii) or (iii), which is allowed as a deduction under section 404 or section 219, and any income of a trust described in subparagraph (A)

(ii) or (iii), which is determined in accordance with regulations prescribed by the Secretary or his delegate to have been applied to purchase the life insurance protection under a contract described in subparagraph (A), is includible in the gross income of the participant for the taxable year when so applied.",

(7) by inserting after "501(a)" in subsection (m)(4)(A) ", a trust described in section 408(a) which is exempt from tax under section 501(a),",

(8) by inserting after "501(a)" in subsection (m)(4)(B) ", a trust described in section 408(a) which is exempt from tax under section 501(a),", and

(9) by redesignating subsection (p) as (q) and inserting after subsection (o) the following new subsection:

"(p) TREATMENT OF CERTAIN PREMATURE DISTRIBUTIONS.—

"(1) APPLICATION OF SUBSECTION.—This subsection shall apply to amounts paid or distributed by a qualified individual retirement account described in section 408(a) which is exempt from tax under section 501(a), which are includible in the gross income of the distributee or payee and which are received by

him before the individual for whose benefit such account is maintained attains the age of 59½ years.

"(2) LIMITATIONS.—This subsection shall not apply to an amount described in paragraph (1)—

"(A) paid or distributed to such individual on account of his becoming disabled within the meaning of subsection (m)(7),

"(B) includible in gross income under section 72(m)(3)(B), or

"(C) paid or distributed by a qualified individual retirement account to the individual for whose benefit such account is maintained if, within 60 days after receipt, such amount is contributed in full to another qualified individual retirement account for such individual's benefit.

Subparagraph (C) shall not apply to an amount described in paragraph (1) which is paid or distributed to an individual with respect to whom such subparagraph applied at any time during the preceding, 36-month period, nor shall it apply unless the same property (other than money) received in such payment or distribution is contributed to such other qualified individual retirement account for such individual's benefit.

"(3) AMOUNT OF PENALTY.—If an individual is required to include in gross income for the taxable year

an amount to which this subsection applies, there shall be imposed, in addition to any other tax imposed by this chapter, a tax for such taxable year equal to 30 percent of such amount. The tax imposed under this paragraph shall not be reduced by any credit under part IV of subchapter A and shall not be treated as a tax imposed by this chapter for purposes of section 56.".

(d) EXCISE TAX ON EXCESSIVE ACCUMULATIONS.—Subtitle D (relating to miscellaneous excise taxes) is amended by adding at the end thereof the following new chapter:

"CHAPTER 43.—RETIREMENT PLANS

"Sec. 4960. Excise tax on individual retirement accounts.

"SEC 4960. EXCISE TAX ON INDIVIDUAL RETIREMENT ACCOUNTS.

"(a) IMPOSITION OF TAX.—There is hereby imposed for each taxable year on the assets of a qualified individual retirement account described in section 408(a) which is exempt from tax under section 501(a) a tax equal to 10 percent of an amount which bears the same ratio to the fair market value of the total assets in such account at the beginning of the taxable year as—

"(1) the minimum amount required to be distributed during such year under section 408(a) (5) or (6) (whichever applies), reduced (but not below zero) by

the total amount actually distributed during such year by the account to the individual for whose benefit such account is maintained or his beneficiary, bears to—

"(2) the minimum amount required to be distributed during such year under section 408(a) (5) or (6) (whichever applies).

"(b) WHEN APPLICABLE.—The tax imposed by this section shall apply only for taxable years beginning after the taxable year in which the individual who established such account attains the age of 70½ years.

"(c) RULES.—For purposes of this section, the minimum amount required to be distributed during a year under section 408(a) (5) or (6) shall be determined under regulations prescribed by the Secretary or his delegate. In the case of an account described in section 408(a)(8) the tax shall be computed only with respect to each individual in such account. A bond described in section 409, with respect to which a deduction was claimed under section 219, shall be treated, for purposes of this section, as a qualified individual retirement account."

(e) LIMITATION ON APPLICATION OF SECTIONS 402 (a) AND 403(a) IN THE CASE OF CERTAIN CONTRIBUTIONS.—Subpart A of Part I of subchapter D of chapter 1 (relating to general rules) is amended as follows:

(1) Amendment of section 402.—Section 402 (a) (relating to taxability of beneficiary of exempt trust) is amended—

(A) by striking out in the first sentence of paragraph (1) "and (4)" and inserting in lieu thereof ", (4), and (6)", and

(B) by inserting after paragraph (5) the following new paragraph—

"(6) Individual retirement accounts.—In the case of an employees' trust described in section 401 (a), which is exempt from tax under section 501(a), if the total distributions payable with respect to any employee are paid to him within 1 taxable year of the employee (during which he is not at any time 59½ years of age or older) on account of his separation from the service other than by reason of his death, the amount of such distribution, to the extent such distribution would be includible in gross income but for the provisions of this paragraph, shall not be includible in gross income in the year paid if, no later than the 60th day after the close of the taxable year in which such amount was paid to him, such otherwise includible amount is contributed by him in full to one or more qualified individual retirement accounts described in section 408(a). This paragraph

shall not apply unless the same property (other than money) received in the total distribution is contributed.

(2) AMENDMENT OF SECTION 403.—Section 403(a) is amended—

(A) by striking out in the first sentence of paragraph (1) "paragraph (2)" and inserting in lieu thereof "paragraphs (2), and (4)", and

(B) by inserting after paragraph (3) the following new paragraph—

"(4) INDIVIDUAL RETIREMENT ACCOUNTS.—If—

"(A) an annuity contract is purchased by an employer for an employee under a plan described in paragraph (1);

"(B) such plan requires that refunds of contributions with respect to annuity contracts purchased under such plan be used to reduce subsequent premiums on the contracts under the plan; and

"(C) the total amounts payable by reason of an employee's separation from the service other than by reason of death are paid to the employee within one taxable year of the employee (during which he is not at any time 59½ years of age or older),

then the amount of such payments, to the extent such amounts would be includible in gross income but for the

provisions of this paragraph, shall not be includible in gross income in the year paid if, no later than the 60th day after the close of the taxable year in which such amounts are paid to him, such otherwise includible amounts are contributed by him in full to one or more qualified individual retirement accounts described in section 408(a). This paragraph shall not apply unless the same property (other than money) received in such payments is contributed. The Secretary or his delegate shall prescribe such regulations as he may deem necessary to carry out the purposes of this paragraph."

(f) INDIVIDUAL RETIREMENT BOND PURCHASE.—Subpart A of Part I of subchapter D of chapter 1 (relating to general rules) is amended by adding at the end thereof the following new section:

"SEC. 409. INDIVIDUAL RETIREMENT BOND PURCHASES.

"(a) REQUIREMENT FOR QUALIFICATION.—An individual's purchase of United States bonds described in subsection (b) shall constitute a qualified individual retirement bond purchase under this section if contributions (not in excess of an amount determined under section 219) are used solely to purchase for the individual or his beneficiaries United States bonds described in subsection (b).

"(b) BONDS TO WHICH APPLICABLE.—

"(1) CHARACTERISTICS OF BONDS.—This section

shall apply to a bond issued under the Second Liberty Bond Act, as amended, which by its terms, or by regulations prescribed by the Secretary under such Act—

"(A) provides for payment of interest, or investment yield, only upon redemption;

"(B) provides that no interest, or investment yield, is payable if the bond is redeemed within 12 months after its issuance;

"(C) provides that it ceases to bear interest, or provide investment yield, on the earlier of—

"(i) the date on which the individual in whose name it is purchased attains the age of 70½ years; or

"(ii) five years after the date on which such individual dies, but not later than the date on which he would have attained age 70½ had he lived;

"(D) may be purchased only in the name of an individual described in subsection (a);

"(E) may be redeemed before the death of the individual in whose name it is purchased only if such individual—

"(i) has attained the age of 59½ years,

"(ii) has become disabled (within the meaning of section 72(m)(7)), or

"(iii) redeems the bond within 12 months after its issuance; and

"(F) is not transferable.

"(d) TAXABILITY OF HOLDER OF QUALIFIED INDIVIDUAL RETIREMENT BONDS.—

"(1) GROSS INCOME NOT TO INCLUDE BONDS AT TIME OF DISTRIBUTION.—For purposes of this chapter, in the case of an individual purchasing a bond described in subsection (b), gross income does not include any amount attributable to the receipt of such bond. Upon redemption of such bond, the proceeds shall be subject to taxation under this chapter, but the provisions of section 72 (relating to annuities, etc.), section 402 (relating to taxability of beneficiary of employee's trust), and section 1232 (relating to bonds and other evidences of indebtedness) shall not apply.

"(2) BASIS.—The basis of any bond received by an individual under a qualified individual retirement bond purchase shall be zero.

"(3) BONDS DEEMED REDEEMED.—For purposes of paragraph (1), the proceeds of a bond described in subsection (b) shall be includible in gross income no later than the taxable year in which the individual attains the age of 70½ years.".

(g) Conforming Amendments.—

(1) Retirement income.—Section 37(c)(1) (defining retirement income) is amended—

(A) by striking out subparagraph (A) and inserting in lieu thereof the following new subparagraph:

"(A) pensions and annuities including—

"(i) in the case of an individual who is, or has been, an employee within the meaning of section 401(c)(1), a distribution by a trust described in section 401(a) which is exempt from tax under section 501(a) to the extent such distribution was not subject to the tax imposed by section 72(p)(3), and

"(ii) a distribution from a qualified individual retirement account described in section 408(a) which is exempt from tax under section 501(a) to the extent such distribution was not subject to the tax imposed by section 72(p)(3),".

(B) by striking out subparagraph (E) and inserting in lieu thereof the following new subparagraphs:

"(E) bonds described in section 405(b) which are received—

"(i) under a qualified bond purchase plan described in section 405(a),

"(ii) in a distribution from a trust described in section 401(a) which is exempt from tax under section 501(a), or

"(iii) from a qualified individual retirement account described in section 408(a) which is exempt from tax under section 501(a), or

"(F) bonds described in section 409(a), or".

(2) ADJUSTED GROSS INCOME.—Section 62 (relating to definition of adjusted gross income) (as amended by section 702(d)(2) of this Act) is amended by inserting after paragraph (8) the following new paragraph:

"(9) INDIVIDUAL RETIREMENT SAVINGS.—The deduction allowed by section 219."

(3) BASIS FOR ASSETS HELD FOR QUALIFIED PENSION PLAN CONTRACTS.—Section 801(g)(7) (relating to basis of assets held for qualified pension plan contracts) is amended by striking out "or (D)" and inserting in lieu thereof "(D), or (E)".

(4) PENSION PLAN RESERVES.—Section 805(d)(1) (relating to definition of pension plan reserves) is amended by striking out "or" at the end of subparagraph (C), by striking out "foregoing." at the end of

subparagraph (D) and inserting in lieu thereof "foregoing; or", and by adding at the end thereof the following new subparagraph:

"(E) purchased under contracts entered into with trusts which (as of the time the contracts were entered into) were deemed to be qualified individual retirement accounts described in section 408(a) which are exempt from tax under section 501(a)."

(5) Averagable income.—Paragraph (2)(A) of section 1302(a) (relating to definition of averagable income) is amended by inserting "or 72(p)(3)" after "section 72(m)(5)".

(6) Earned income.—Section 1348(b)(1) (relating to definition of earned income) is amended by inserting ", 72(p)(3)" after "72(n)".

(h) Clerical Amendments.—

(1) The table of sections for part VII of subchapter B of chapter 1 is amended by striking out the item relating to section 219 and inserting in lieu thereof the following:

"Sec. 219. Retirement savings.
"Sec. 220. Cross references."

(2) The table of sections for subpart A of part I of subchapter D of chapter 1 is amended by adding at the end thereof the following new item:

"Sec. 408. Individual retirement accounts."

(3) The table of sections for subpart A (designated as such by section 201(c) of this Act) of part I of subchapter D is amended by adding at the end thereof the following new item:

"Sec. 409. Qualified individual bond purchases.".

(4) The table of chapters of subtitle D is amended by adding at the end thereof the following new item:

"Chapter 43. Retirement plans.".

(i) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1973.

SEC. 702. CERTAIN PLANS.

(a) CERTAIN DEFINED BENEFIT PLANS.—Section 401 (relating to qualified pension, etc. plans) is amended—

(1) by inserting at the end of subsection (a) the following new paragraphs:

"(12) In the case of a trust which is a part of a defined benefit plan, the plan of which such trust is a part satisfies the requirements of subsections (j) and (k).

"(13) A trust forming part of a plan which provides contributions or benefits for employees, some or all of whom are proprietary employees, shall constitute a qualified trust under this section only if the requirements of section 412 are satisfied.",

(2) by striking out the first sentence of subsection (d)(1) and inserting in lieu thereof the following:

"In the case of a trust which is created on or after the date of the enactment of this subsection, or which was created before such date but is not exempt from tax under section 501(a) as an organization described in subsection (a) on the day before such date, the assets thereof are held by a bank or other person who demonstrates to the satisfaction of the Secretary or his delegate that the manner in which he will hold such assets will be consistent with the requirements of this section. Notwithstanding the requirements of the preceding sentence, a person (including the employer) other than the trustee or custodian so holding plan assets may be granted, under the trust instrument, the power to control the investment of the trust funds either by directing investments (including reinvestments, disposals, and exchanges) or by disapproving proposed investments (including reinvestments, disposals, or exchanges).", and

(3) by redesignating subsection (j) as (l) and inserting after subsection (i) the following new subsections:

"(j) CERTAIN DEFINED BENEFIT PLANS.—

"(1) GENERAL RULES.—A trust which is a part of a defined benefit plan which provides benefits for em-

ployees, some or all of whom are employees within the meaning of subsection (c)(1) or proprietary employees within the meaning of section 412(b)(1), shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that the basic benefit accruing for each separate plan year of participation by such an employee shall not exceed the product of the compensation of such employee under the plan for such year (not in excess of $50,000) and the percentage shown on the following table corresponding to his age at the time his current period of participation began:

"*Age attained at participation—*	
30 or less	*6.5*
35	*5.4*
40	*4.4*
45	*3.6*
50	*3.0*
55	*2.5*
60 or over	*2.0*

For purposes of this subsection, the term 'basic benefit' means a benefit in the form of a straight life annuity commencing at the later of age 65, or 5 years from the time the participant's current period of participation began, under a plan which provides no ancillary benefits and to which employees do not contribute. The Secretary or his delegate shall prescribe regulations under which the percentages shown on such table shall be adjusted

for plans which do not meet the conditions described in the preceding sentence and under which percentages for ages between those shown on the table shall be determined. After December 31, 1977, the Secretary or his delegate may, by regulations, prescribe revised percentages to be used in lieu of the percentages shown in the table provided by this subsection. Such percentages shall be revised by the Secretary or his delegate on the basis of changes in prevailing interest and mortality rates occurring after 1973.

"(2) ALTERNATIVE LIMITATION FOR PROPRIETARY EMPLOYEES.—Notwithstanding the provisions of paragraph (1), a qualified plan (other than a plan which provides benefits for an employee of an electing small business corporation as defined in section 1371) may provide for a basic benefit on behalf of an individual who is a proprietary employee (within the meaning of section 412(b)(1)) which does not exceed 75 percent of the participant's average high 3-year compensation from the employer. This amount shall be amortized in equal payments over the remaining future service of each such proprietary employee or over 10 years whichever is the longer. Average high 3-year compensation from the employer is the amount includible in the gross income of the participant (determined without regard to section

911) for the period of 3 actual consecutive taxable years (or if he has been an employee for less than 3 years, the number of years he has been an employee) of the participant for which his compensation from the employer is the greatest but not in excess of the first $100,000 per year. Where contributions are made under a plan for a proprietary employee who was a participant for a period of less than 10 years, the basic benefit which may be provided under the plan (under this paragraph) shall be reduced ratably.

"(3) AGGREGATION OF PLANS.—For purposes of this subsection—

"(A) DEFINED BENEFIT PLANS.—If a defined benefit plan provides benefits for an owner-employee of a trade or business who controls, or for two or more owner-employees who together control, one or more other trades or businesses, that defined benefit plan and all defined benefit plans established with respect to such other trades or businesses shall be considered as a single plan.

"(B) DEFINED CONTRIBUTION PLANS.—If a defined contribution plan provides for contributions from an owner-employee of a trade or business who controls, or for two or more owner-employees who together control, one or more other trades or busi-

nesses, that defined contribution plan and all defined contribution plans established with respect to such other trades or businesses shall be considered as a single plan.

"(C) Rules.—For purposes of this paragraph, the term 'owner-employee' also includes an individual who is a proprietary employee (as defined in section 412(b)(1)), and the terms 'control' and 'controls' have the same meaning as they have in subsection (d)(9). An owner-employee who is a participant in both types of plans (described in subparagraphs (A) and (B)) shall be treated, under regulations prescribed by the Secretary or his delegate, as if he were a participant in only one such type of plan.

"(4) Reduction of benefits.—In the case of an owner-employee or proprietary employee who is covered by a defined benefit plan to which this subsection applies, as well as a defined contribution plan, if for a taxable year a deduction is allowable under section 404 (a)(9) for a contribution with respect to such owner-employee, then for the plan year of a defined benefit plan ending with or within such taxable year, in applying this subsection the percentage determined under paragraph (1) shall be the percentage determined under such para-

graph (without regard to this paragraph) multiplied by the excess of 1 over a fraction—

"(A) the numerator of which is the amount so allowable under section 404(a)(9), and

"(B) the denominator of which is the limitation determined under section 404(a)(9) with respect to such individual.

"(5) SPECIAL RULES.—Section 404(e) (relating to special limitations for self-employed individuals) shall not apply to a trust to which this subsection applies.

"(k) LIMITATION ON BENEFITS UNDER DEFINED BENEFIT PLAN.—A trust which is a part of a defined benefit plan shall not constitute a qualified trust under this section if, under the plan of which such trust is a part, the benefit under the plan, together with the benefits under all other defined benefit plans (whether or not terminated) of the employer, exceeds 100 percent of the participant's average compensation from the employer which is includible in the gross income of the participant (determined without regard to section 911) for the period of 3 consecutive taxable years of the participant for which his compensation from the employer is the greatest. For purposes of this subsection, if the benefits provided under a pension plan are not in the form of a straight life annuity commencing at age 65 adjusted for fluctuations in the cost of living under a plan to

which employees do not contribute, which provides no ancillary benefits, the 100 percent limit provided by the preceding sentence shall be adjusted, in accordance with regulations prescribed by the Secretary or his delegate to reflect such other form. In the case of a participant in a defined benefit plan who is also a participant in a money purchase pension plan with respect to the same employment, the limitation determined under this subsection shall be the 100 percent limitation (as adjusted pursuant to the preceding sentence), multiplied by the excess of one over a fraction—

"(1) the numerator of which is the percentage of compensation contributed under the money purchase pension plan (but not greater than 20), and

"(2) the denominator of which is 20.

The percentage limitation applicable to an employee who has been an active participant in the plan for fewer than 10 full plan years shall be the percentage limitation otherwise determined under this subsection, multiplied by a fraction, the numerator of which is the number of such full years and the denominator of which is 10."

(3) by striking out, at the end of subsection (d)(9)(B)(i) "or", by striking out at the end of subsection (d)(9)(B)(ii) "partnership." and inserting in lieu thereof "partnership, or", and by inserting after subsection (d)(9)(B)(ii) the following new clause:

"*(iii) in the case of a corporation, own, or are considered as owning, within the meaning of section 1563(e), stock possessing 50 percent or more of the total combined voting power of all classes of stock entitled to vote or 50 percent or more of the total value of shares of stock of the corporation.*"

(b) Plans of Proprietary Employees.—Subpart B of part I of subchapter D of chapter 1 (relating to special rules), as added by section 201 and amended by section 221, is amended by inserting at the end thereof the following new section:

"SEC. 412. PLAN OF PROPRIETARY EMPLOYEE.

"(a) General Rule.—In the case of a plan which provides contributions or benefits for employees some or all of whom are proprietary employees (as defined by subsection (c))—

"(1) the provisions of section 404(e) shall apply, and

"(2) paragraph (5) of section 401(d) (without regard to subparagraph (c)) and section 401(e) (without regard to paragraph (2)(E)) shall apply if such plan is not a defined benefit plan but excess contributions shall be repaid to the proprietary employee on whose behalf they were made.

For purposes of paragraph (1), the compensation of a proprietary employee taken into account shall not exceed $100,000 per year, and the basic or regular rate of compensation of such an employee taken into account shall not exceed the rate equivalent to compensation at a rate of $100,000 per year paid in equal installments over the year. The provisions referred to in paragraphs (1) and (2) shall be applied as if each proprietary employee were an employee within the meaning of section 401(c)(1).

"(b) DEFINITIONS.—For purposes of this section and section 401—

"(1) PROPRIETARY EMPLOYEE.—The term 'proprietary employee' means an individual who owns, or is considered as owning, within the meaning of section 1563(e), stock possessing 2 percent or more of the total combined voting power of all classes of stock entitled to vote or 2 percent or more of the total value of shares of stock of the corporation if the total of the present value of the accrued benefits, of all such employees who are active participants in the plan, derived from employed contributions (within the meaning of section 411(b)(2)) exceeds 25 percent of the present value of such accrued benefits for all active participants in the plan. For purposes of this paragraph, in the case of a profit-sharing or stock bonus plan, the rules of section 1563(e)

shall be applied without respect to paragraph (3)(C) thereof. To the extent provided in regulations prescribed by the Secretary or his delegate, such term also means an individual who has been a proprietary employee within the meaning of the preceding sentence. The Secretary or his delegate is authorized to prescribe by regulations the actuarial assumptions to be applied in computing accrued benefits for purposes of this paragraph and the time at which the present value of such benefits is determined.

"(2) AGGREGATION OF PLANS.—For purposes of this subsection—

"(A) DEFINED BENEFIT PLANS.—If a defined benefit plan provides benefits for a proprietary employee of a trade or business who controls, or for two or more proprietary employees who together control, one or more other trades or businesses, that defined benefit plan and all defined benefit plans established with respect to such other trades or businesses shall be considered as a single plan.

"(B) DEFINED CONTRIBUTION PLANS.—If a defined contribution plan provides for contributions from a proprietary employee of a trade or business who controls, or for two or more proprietary

employees of a trade or business who together control, one or more other trades or businesses, that defined contribution plan and all defined contribution plans established with respect to such other trades or businesses shall be considered as a single plan.

"(C) RULES.—If any such proprietary employee is an owner-employee (within the meaning of section 401(c)(3)) of a trade or business and is a participant in a defined benefit or a defined contribution plan established with respect to that trade or business, such plan shall be taken into account under subparagraph (A) or (B), whichever is applicable, for purposes of this paragraph. A proprietary employee who is a participant in both types of plans (described in subparagraphs (A) and (B)) shall be treated, under regulations prescribed by the Secretary or his delegate, as if he were a participant in only one such type of plan.

"(D) CONTROL.—For purposes of subparagraph (A), a proprietary employee, or two or more proprietary employees, shall be considered to control a trade or business if such proprietary employee, or such two or more proprietary employees together—

"(i) own the entire interest in an unincorporated trade or business,

"(ii) in the case of a partnership, own more than 50 percent of either the capital interest or the profits interest in such partnership, or

"(iii) in the case of a corporation, own (or are considered as owning, within the meaning of section 1563(e)) more than 50 percent of the total combined voting power of stock entitled to vote or more than 50 percent of the total value of shares of stock of the corporation.

For purposes of subparagraph (B), a proprietary employee, or two or more proprietary employees, shall be treated as owning any interest in a partnership which is owned, directly or indirectly, by a partnership which such proprietary employee, or such two or more proprietary employees, are considered to control within the meaning of the preceding sentence.".

(c) Repeal of Section 1379.—Subchapter S of chapter 1 is amended by striking out section 1379.

(d) Conforming Amendments.—

(1) The table of sections for subchapter S of chapter 1 is amended by striking out the last item in the table.

(2) Section 62 (relating to adjusted gross income) is amended by striking out paragraph (9).

(e) Clerical Amendment.—The table of sections for subpart B of part I of subchapter D of chapter 1 (relating to special rules), as added by section 221 and amended by section 231, is amended by adding at the end thereof the following new item:

"Sec. 412. Plan of a proprietary employee.".

(f) Effective Date.—

(1) General rule.—Except as provided in paragraphs (2) and (3), the amendments made by this section shall apply to plan years beginning after December 31, 1973.

(2) In the case of a plan in existence on July 24, 1973, the amendments made by this section shall apply—

(A) to plan years beginning after December 31, 1975, or,

(B) if later, the earlier of plan years beginning after—

(i) the termination of the agreement pursuant to which the plan is maintained, which the Secretary of the Treasury or his delegate finds to be a collective-bargaining agreement, between employee representatives and one or more employers, in effect on July 24, 1973, or

(ii) December 31, 1980.

For purposes of clause (i), the date on which an agreement terminates shall be determined without regard to any extension thereof agreed to after July 24, 1973.

(3) In the case of a plan in existence on July 24, 1973, the second sentence of section 401(j)(4) (as added by this section) shall apply only with respect to plan years beginning after December 31, 1979.

SEC. 703. TAXATION OF CERTAIN LUMP-SUM DISTRIBUTIONS.

(a) AMENDMENT OF SECTION 72(n).—Section 72(n) (relating to total distributions) is amended by—

(1) striking out the portion of paragraph (2) preceding "applies" the first time it appears and inserting in lieu thereof the following:

"(2) CERTAIN EMPLOYEES.—In any case to which this paragraph",

(2) inserting after paragraph (B) of such paragraph the following: "This paragraph applies to amounts to which this subsection applies which are distributed or paid with respect to an individual who is an employee (within the meaning of section 401(c)(1)) if the number of plan years such individual was such an employee under the plan under which such

amounts are distributed or paid exceeds 50 percent of the number of plan years for which he was a participant in such plan.",

(3) striking out "this subsection" in paragraph (3) and inserting in lieu thereof "paragraph (2)", and

(4) striking out paragraph (4) and inserting in lieu thereof the following:

"(4) DETERMINATION OF TAX ON CERTAIN TOTAL DISTRIBUTIONS.—Notwithstanding any other provisions of this chapter, except as provided in paragraph (5), the tax on amounts to which this subsection (other than paragraph (2)) applies is 15 times the product of—

"(A) the tax (determined by applying the rates contained in the table in section 1(c)) that would result if the taxable income of the recipient were one-fifteenth of the excess of

"(i) the sum of the amount to which this paragraph applies and the portion of the distribution or payment which receives capital gains treatment under section 402(a)(2) or 403(a)(2)(A), over

"(ii) the minimum distribution allowance, multiplied by

"(B) a fraction, the numerator of which is the number of calendar years after 1973 the recipient

was an active participant in the plan and the denominator of which is the total number of calendar years the recipient was an active participant in the plan.

For purposes of this paragraph, the minimum distribution allowance is one-half of the first $20,000 of the sum referred to in clause (i), reduced (but not below zero) by 20 percent of the excess of such sum over $20,000.

"(5) MULTIPLE DISTRIBUTIONS.—If an individual receives more than one distribution to which paragraph (4) applies during a period of 6 consecutive taxable years of that individual, the tax payable on the second or subsequent such distribution shall be determined, under regulations prescribed by the Secretary or his delegate, by applying the provisions of paragraph (4) to the aggregate amount of all such distributions within such period and reducing the amount of the tax so determined by the amount of tax paid with respect to prior distributions within the period. For purposes of this paragraph, such distributions shall be aggregated without regard to the source of such distributions.

"(6) COMMUNITY PROPERTY LAWS.—The provisions of paragraphs (4) and (5) shall be applied without regard to the community property laws of any State.

"(7) ANNUITIES.—*For purposes of paragraphs (4) and (5), the distribution of an annuity shall be treated as a distribution in an amount equal to the cash surrender value of such annuity on the date of distribution.*".

(b) AMENDMENT OF SECTION *402.—Section 402(a) (relating to taxability of beneficiary of exempt trust) is amended by striking out paragraph (5) and inserting in lieu thereof the following:*

"(5) PHASE OUT OF CAPITAL GAINS TREATMENT.—*The first sentence of paragraph (2) shall apply to a distribution paid after December 31, 1973, only to the extent that it does not exceed such distribution (reduced in accordance with such sentence) multiplied by a fraction, the numerator of which is the number of full years of active participation by the employee in such plan for plan years beginning before January 1, 1974, and the denominator of which is the number of full years of active participation by the employee in such plan.*"

(c) AMENDMENT OF SECTION *403.—Section 403(a) (relating to taxability of beneficiary under a qualified annuity plan) is amended by striking out paragraph (2)(C) and inserting in lieu thereof the following:*

"(C) Phase out of capital gains treatment.—Subparagraph (A) shall apply to a payment paid

after December 31, 1973, only to the extent that it does not exceed such payment (reduced in accordance with such subparagraph) multiplied by a fraction, the numerator of which is the number of full years of active participation by the employee in such plan for plan years beginning before January 1, 1974, and the denominator of which is the number of full years of active participation by the employee in such plan."

(d) CONFORMING AMENDMENTS.—

(1) PROHIBITION OF DOUBLE INCOME AVERAGING.—Subsection 1304(b) (relating to special rules) is amended by redesignating paragraphs (3), (4), (5), and (6) as paragraphs (4), (5), (6), and (7), respectively, and inserting after paragraph (2) the following new paragraph:

"(3) section 72(n)(4) (relating to determination of tax on certain total distributions) and section 72(n)(5) (relating to multiple distributions),".

(2) LIMITATION ON THE APPLICATION OF SUBSECTION 1304(b).—Section 1304 (relating to special rules on income averaging) is amended by adding at the end thereof the following new subsection:

"(g) LIMITATION ON THE APPLICATION OF SUBSECTION.—(b). Recipients of distributions to which section 72

(n)(2) or 72(n)(4) apply may choose the benefit of this part except with respect to such distributions.".

(e) EFFECTIVE DATES.—The amendments made by this section shall take effect on January 1, 1974.

SEC. 704. CONTRIBUTIONS ON BEHALF OF SELF-EMPLOYED INDIVIDUALS AND PROPRIETARY EMPLOYEES.

(a) REVISION OF LIMITATIONS.—

(1) LIMIT ON DEDUCTIONS.—Section 404(e) (relating to deduction limitations) is amended by—

(A) striking out "$2,500, or 10 percent" in paragraphs (1) and (2)(A) and inserting in lieu thereof "$7,500, or 15 percent",

(B) striking out "whichever is the lesser." in paragraphs (1) and (2)(A) and inserting in lieu thereof "whichever is the lesser, the alternative limitation for proprietary employees described in paragraph (4), or the minimum deductible amount described in paragraph (5).", and

(C) by inserting after paragraph (3) the following new paragraph:

"(4) ALTERNATIVE LIMITATION FOR PROPRIETARY EMPLOYEES.—

"(A) Notwithstanding the limitations of paragraph (1) (but subject to the provisions of section

414), in the case of a plan (other than a plan which provides benefits for an employee of an electing small business corporation as defined in section 1371) which provides contributions for employees, some or all of whom are proprietary employees (within the meaning of section 412(b)(1)), the amounts deductible under subsection (a) in any taxable year with respect to contributions on behalf of any proprietary employee may equal the present value (based on a 6 percent interest rate) of the 'unfunded limitation balance'.

"(B) The term 'unfunded limitation balance' means in the case of a plan which provides no ancillary benefits any excess of—

"(i) 75 percent of the 'contribution base' divided by the appropriate conversion factor (within the meaning of section 411(b)(2)), over

"(ii) what the balance of the employee's account under the plan, as of the close of the preceding plan year, would be if it earned interest at the rate of 6 percent per annum, compounded annually until 'normal retirement age'.

The Secretary or his delegate shall prescribe regula-

tions defining the term 'unfunded limitation balance' for plans providing for ancillary benefits.

"(C) The term 'contribution base' means the average high 3 year compensation includible in the gross income of the participant (determined without regard to section 911) for any 3 consecutive (current or past) taxable years (or if he has been an employee for less than 3 years, the number of years he has been an employee) of the participant for which his compensation from the employer is the greatest, but not in excess of the first $100,000 of compensation for any year.

"(D) For purposes of this paragraph, the term 'normal retirement age' means the older of age 65 or if older the age of the employee on the last day of the tenth year for which he will be a participant under the plan.

"(E) In making the computation provided under this paragraph the provisions of paragraph (2) shall be applicable.

"(F) Notwithstanding the limits of subsections (a) (3) and (7) (whichever is applicable), if the amount determined under subparagraph (A) for any taxable year is less than the amount allowable as a deduction under such subsections then,

the excess of the amount allowable under such subsections over the amount determined in subparagraph (A) shall be carried forward and allowable as a deductible contribution when paid in succeeding taxable years to the extent that the total contributions do not exceed the amount determined under subparagraph (A) in such taxable year.

"(G) The Secretary or his delegate may prescribe separate conversion factors under subparagraph (B)(i) for whose normal retirement age is other than age 65 and may adjust this factor to reflect changes in mortality or interest rates.

"(5) MINIMUM DEDUCTIBLE AMOUNT.—For purposes of this subsection, the minimum deductible amount for any employee is the lesser of—

"(A) $750, or

"(B) 100 percent of his earned income derived by him from the trade of business with respect to which the plan is established.".

(2) LIMIT ON CONTRIBUTIONS.—Section 401(e)(3) (relating to contributions for premiums on annuity, etc., contracts) is amended by striking out "$2,500" and inserting in lieu thereof "$7,500".

(3) LIMIT ON AMOUNT RECEIVED.—Section 72(m)(5)(B)(i) (relating to penalties applicable to cer-

tain amounts received by owner-employees) is amended by striking out "$2,500" and inserting in lieu thereof "$7,500".

(b) Discrimination.—Section 401(a) (relating to requirements for qualification) is amended by adding at the end thereof the following new paragraph:

"(12) In the case of a plan which provides contributions or benefits for employees some or all of whom are employees (as defined in subsection (c)(1)), the compensation of such an employee taken into account for purposes of paragraph (4) shall not exceed $100,000 per year, and the basic or regular rate of compensation of such an employee taken into account for such purposes shall not exceed the rate equivalent to compensation at a rate of $100,000 per year paid in equal installments over the year.".

(c) Effetive Date.—The amendments made by this section shall apply for taxable years beginning after 1973.

SEC. 705. COLLECTIVELY BARGAINED PLANS.

(a) General Rule.—Subpart B of part I of subchapter D of chapter 1 (relating to special rules) as added by section 201 and amended by sections 221 and 702 is amended by inserting at the end thereof the following new section:

"SEC. 413. COLLECTIVELY BARGAINED PLANS.

"(a) APPLICATION OF SECTION.—This section applies to—

"(1) a plan created and maintained pursuant to an agreement which the Secretary or his delegate finds to be a collective bargaining agreement between employee representatives and one or more employers, and

"(2) each trust which is a part of such plan.

"(b) GENERAL RULE.—If this section applies to a plan, notwithstanding any other provision of this title—

"(1) Section 410 shall be applied as if all employees of each of the employers who are parties to the collective bargaining agreement and who contribute to or under the plan on the same basis were employed by a single employer.

"(2) Section 401(a)(4) and 411(c)(4) shall be applied as if all participants who are employed by employers who contribute to or under the plan on the same basis were employed by a single employer.

"(3) For purposes of section 401(a), in determining whether the plan of an employer is for the exclusive benefit of his employees and their beneficiaries, all plan participants shall be considered to be his employees.

"(4) Section 411 shall be applied as if all employers who have been parties to the collective bargaining agreement constituted a single employer.

"(5) The minimum funding standard provided by section 4971 shall be determined as if all participants in the plan were employed by a single employer. For purposes of section 4971 (other than for purposes of determining the portion of a liability required to be amortized for a plan year), a plan year shall be considered to begin on the date the collective bargaining agreement is first effective (treating an agreement to extend a prior agreement as a new agreement, and to end on the expiration date of the agreement determined under such agreement).

"(6) For a plan year (determined without regard to paragraph (5)) the liability under section 4972 of each employer who is a party to the collective bargaining agreement shall be determined, in accordance with regulations prescribed by the Secretary or his delegate, on the basis of his contributions under the plan and his liability for contributions under the plan. The liability for tax under such section in the case of such a plan shall apply first to the extent of any delinquency in meeting required contributions on the part of an employer under such plan.

"(7) For a calendar year the liability under section 4975 of each employer who is a party to the collective bargaining agreement during the calendar year shall be determined by reference to the number of plan participants employed by the employer at any one time during the calendar year.

"(8) Each applicable limitation provided by section 404(a) shall be determined for a plan year (within the meaning of paragraph (5)) as if all participants in the plan were employed by a single employer. The amounts contributed to or under the plan by each employer who is a party to the contract, for the portion of his taxable year which is included within such a plan year, shall be considered not to exceed such a limitation if the anticipated employer contributions for such plan year (determined in a manner consistent with the manner in which actual employer contributions for such plan year are determined) do not exceed such limitation. If such anticipated contributions exceed such a limitation, the portion of each such employer's contributions which is not deductible under section 404 shall be determined in accordance with regulations prescribed by the Secretary or his delegate."

(b) EFFECTIVE DATE.—The amendment made by this

section shall apply for taxable years and plan years beginning on or after January 1, 1976.

SEC. 706. MISCELLANEOUS PROVISIONS.

(a) EMPLOYEE CONTRIBUTIONS OF OWNER-EMPLOYEES.—Section 401(d)(4)(B) (relating to additional requirements for qualification of trusts and plans benefiting owner-employees) is amended by inserting "in excess of contributions made by an owner-employee as an employee" after "benefits".

(b) CERTAIN CUSTODIAL ACCOUNTS.—Section 401 (relating to pension, profit-sharing, and stock bonus plans) is amended by striking out subsection (f) and inserting in lieu thereof the following:

"(f) CERTAIN CUSTODIAL ACCOUNTS OR OTHER ARRANGEMENTS.—For purposes of this title, a custodial account or an arrangement similar to a custodial account or similar to an annuity contract shall be treated as a qualified trust under this section if—

"(1) the custodial account or arrangement would, except for the fact that it is not a trust, constitute a qualified trust under this section, and

"(2) the assets thereof are held by a bank (as defined in subsection (d)(1)) or another person who demonstrates, to the satisfaction of the Secretary or his dele-

gate, that the manner in which he will hold the assets will be consistent with the requirements of this section. For purposes of this title, in the case of a custodial account or arrangement treated as a qualified trust under this section by reason of this subsection, the person holding the assets of such account or arrangement shall be treated as the trustee thereof.".

(c) CUSTODIAL ACCOUNTS FOR REGULATED INVESTMENT COMPANY STOCK.—Section 403(b) (relating to taxability of beneficiary under annuity purchased by section 501(c)(3) organization or public school) is amended by adding at the end thereof the following new paragraph:

"(7) CUSTODIAL ACCOUNTS FOR REGULATED INVESTMENT COMPANY STOCK.—

"(A) AMOUNTS PAID TREATED AS CONTRIBUTIONS.—For purposes of this title, amounts paid by an employer described in paragraph (1)(A) to a custodial account which satisfies the requirements of section 401(f) shall be treated as amounts contributed by him for an annuity contract for his employee if the amounts are paid to provide a retirement annuity for that employee and are to be invested in regulated investment company stock to be held in that custodial account.

"(B) ACCOUNT TREATED AS PLAN.—For purposes of this title, a custodial account which satisfies the requirements of section 401(f) shall be treated as an organization described in section 401(a) with respect to amounts received by it (and income from investment thereof) which are excluded under this subsection from the gross income of the employees on whose behalf such amounts are paid.

"(C) REGULATED INVESTMENT COMPANY.—For purposes of this paragraph, the term 'regulated investment company' means a domestic corporation which is a regulated investment company within the meaning of section 851(a), and which issues only redeemable stock.".

(d) AMENDMENTS TO SECTION 404.—

(1) Section 404(a) (relating to deduction for contributions of an employer to an employee's trust, etc.) is amended by—

(A) striking out paragraph (1)(A);

(B) striking out paragraph (1) (B) and (C) and inserting in lieu thereof the following:

"(B) the amount necessary to provide with respect to all of the employees under the trust the remaining unfunded cost of their past and current service credits distributed as a level amount, or a

level percentage of compensation, over the remaining future service of each such employee, as determined under regulations prescribed by the Secretary or his delegate, but if such remaining unfunded cost with respect to any three individuals is more than 50 percent of such remaining unfunded cost, the amount of such unfunded cost attributable to such individuals shall be distributed over a period of at least 5 taxable years, or

"(C) in lieu of the amount allowable under subparagraph (B), an amount equal to the normal cost of the plan, as determined under regulations prescribed by the Secretary or his delegate, plus, if past service or other supplementary pension or annuity credits are provided by the plan, an amount not in excess of 10 percent of the cost which would be required to completely fund or purchase such pension or annuity credits as of the date when they are included in the plan as determined under regulations prescribed by the Secretary or his delegate, except that in no case shall a deduction be allowed for any amount (other than the normal cost) paid in after such pension or annuity credits are completely funded or purchased."; and

(c) adding immediately after paragraph (1) (D) the following new sentence: "The limitations under subparagraphs (B) and (C) shall not apply with respect to the amount of a contribution made to or under a pension plan to the extent such contribution does not exceed the minimum funding standard described in section 4971.".

(2) Section 404(a) (relating to deduction for contributions of an employer to an employee's trust, etc.) is amended by striking out paragraph (6) and inserting in lieu thereof:

"(6) TIME WHEN CONTRIBUTIONS DEEMED MADE.—For purposes of paragraphs (1), (2), and (3), a taxpayer shall be deemed to have made a payment on the last day of the preceding taxable year if the payment is on account of such taxable year and is made not later than the time prescribed by law for filing the return for such taxable year (including extensions thereof)."

(e) INCLUSION OF CERTAIN EMPLOYEE CONTRIBUTIONS IN GROSS INCOME.—Subpart A of part I of subchapter D of chapter 1 (relating to general rules) as added by section 201 and as amended by sections 701 (b) and (e) of this Act is further amended by adding at the end thereof the following new section:

"SEC. 414. INCLUSION OF CERTAIN EMPLOYER CONTRIBUTIONS IN GROSS INCOME.

"(a) INCLUSION OF CONTRIBUTIONS IN GROSS INCOME.—Notwithstanding the provisions of section 402 (relating to taxability of beneficiary of employees' trust), section 403 (relating to taxation of employee annuities), or section 405(d) (relating to taxability of beneficiaries under qualified bond purchase plans), an individual shall include in gross income, for his taxable year in which or with which the taxable year of his employer ends, the amount equal to the excess of—

"(1) the amount of the contributions made on his behalf by the employer during the taxable year of the employer (including amounts deemed to be paid during such year under section 404(a)(6)) to or under a money purchase pension plan which satisfies the requirements of section 401(a), 404(a)(2), or 405(a) during such taxable year of the employer, over

"(2) 20 percent of such individual's compensation otherwise paid or accrued by him from such employer during the employer's taxable year.

In any taxable year of an individual in which he is covered under two or more money purchase pension plans maintained by an employer, the amount includable in gross income shall be the amount by which the total of such

contributions exceeds 20 percent of the compensation received or accrued by such individual during the taxable year of his employer.

"(b) Treatment of Amounts Included in Gross Income.—Any amount included in the gross income of an individual under subsection (a) shall be treated as consideration for the contract contributed by the individual for purposes of section 72 (relating to annuities).

"(c) Deduction for Amounts Not Received as Benefits.—If—

"(1) Amounts are included in the gross income of an individual under subsection (a), and

"(2) the rights of such individual (or his beneficiaries) under the plan terminate before payments under the plan which are excluded from gross income equal the amounts included in gross income under subsection (a),

then there shall be allowed as a deduction, for the taxable year in which such rights terminate, an amount equal to the excess of the amounts included in gross income under subsection (a) over such payments.

"(d) Limitations.—(1) Subsection (a) shall not apply for a taxable year of an employee if, at all times during the employer's taxable year referred to in subsection (a), under the money purchase pension plans maintained by the

employer (considering all such plans as a single plan) the rate at which employer contributions are to be made with respect to employee compensation does not exceed 20 percent.

"(2) Subsection (a) shall not apply to contributions made to or under a money purchase pension plan on behalf of an individual who is an employee within the meaning of section 401(c)(1).

"(e) REGULATIONS.—The Secretary or his delegate is authorized to prescribe such forms and regulations as may be necessary to carry out the purposes of this section, including forms on which employers may be required to furnish needful information to employees. Such forms shall be furnished to employees at such time as the Secretary or his delegate may by regulations prescribe."

(f) LIMITATION ON DEDUCTION FOR CONTRIBUTIONS ON BEHALF OF CORPORATE EMPLOYEES.—Section 404 (relating to deduction for contributions of an employer to an employees' trust or annuity plan and compensation under a deferred-payment plan) is amended by adding at the end thereof the following new subsection:

"(h) LIMITATION ON DEDUCTION FOR CONTRIBUTIONS ON BEHALF OF CORPORATE EMPLOYEES.—Notwithstanding the provisions of subsection (a), no deduction shall be allowed for a contribution made for or on behalf of a

corporate employee to or under a defined benefit plan or a defined contribution plan if the amount of such contribution or if the benefit provided under the plan exceeds the amount specified as an alternative limitation on deduction or benefits for proprietary employees in subsection (e)(4) or section 401(j)(2), whichever is applicable.".

(g) PENALTY FOR FAILURE TO FURNISH INFORMATION.—Subchapter B of chapter 68 (relating to assessable penalties) as amended by section 221 of this Act is further amended by inserting at the end thereof the following new section:

"SEC. 6691. REPORTS BY EMPLOYERS.

"(a) CIVIL PENALTY.—If any person who is required, by regulations prescribed under section 409(e), or by regulations prescribed under section 151 of the Retirement Income Security for Employees Act, to furnish information to the Secretary or his delegate or to an employee fails to comply with such requirement at the time prescribed by such regulations, such person shall pay a penalty of $10 for each such failure, unless it is shown that such failure is due to reasonable cause.

"(b) DEFICIENCY PROCEDURES NOT TO APPLY.—Subchapter B of chapter 63 (relating to deficiency procedures for income, estate, gift and certain excise taxes) shall

not apply in respect of the assessment or collection of any penalty imposed by subsection (a).".

(h) NET OPERATING LOSS.—*Section 172(d)(4) (relating to net operating loss modifications) is amended by—*

(1) striking out "and" at the end of subparagraph (C),

(2) striking out "such individual." in subparagraph (D) and inserting in lieu thereof "such individual; and", and

(3) by adding immediately after subparagraph (D) the following new subparagraph (E):

"(E) any deductions allowed under section 219 shall not be treated as attributable to the trade or business of an individual."

(i) RETROACTIVE CHANGES IN PLAN.—*Section 401 (relating to qualified pension, etc., plans) is amended by striking out subsection (b) and inserting in lieu thereof:*

"(b) CERTAIN RETROACTIVE CHANGES IN PLAN.—*A stock bonus, pension, profit-sharing, or annuity plan shall be considered as satisfying the requirements of subsection (a) for the period beginning with the date on which it was put into effect, or for the period beginning with the date on which there was put into effect any amendment which caused the plan to fail to satisfy such requirements, and ending with the time prescribed by law for filing the return of the em-*

ployer for his taxable year in which such plan or amendment was put into effect (including extensions thereof) or such later time as the Secretary or his delegate may designate, if all provisions of the plan which are necessary to satisfy such requirements are in effect by the end of such period and have been made effective for all purposes for the whole of such period.".

(j) WHEN CONTRIBUTIONS ARE INCLUDIBLE IN INCOME.—

(1) BENEFICIARY OF EMPLOYEE'S TRUST.—Section 402(a)(1) (relating to taxability of beneficiary of exempt trust) is amended by striking out "(1) GENERAL RULE.—" and inserting in lieu thereof the following:

"(1) GENERAL RULES.—A contribution by an employer to an employees' trust described in section 401(a) which is exempt from tax under section 501(a) shall not be includible in the gross income of the employee in the year in which so contributed or accrued For purposes of the preceding sentence, a contribution shall not be treated as having been made by an employer if it is designated as an employee contribution or if the contribution is made as a consequence of the employee's individual choice in return for a reduction in his compensation for foregoing an increase in compensation.".

(2) Employee annuities.—Section 403(a)(1) (relating to taxability of beneficiary under a qualified annuity plan) is amended to read as follows:

"(1) General rules.—If an annuity contract is purchased by an employer for an employee under a plan which meets the requirements of section 404(a)(2) (whether or not the employer deducts the amounts paid for the contract under such section)—

"(A) the payment of the purchase price by the employer shall not be includible in the gross income of the employee in the year in which paid or accrued; and

"(B) except as provided in paragraph (2), the employee shall include in his gross income the amounts received under such contract for the year received as provided in section 72 (relating to annuities).

For purposes of subparagraph (A), an amount paid for the purchase of an annuity contract shall not be treated as being paid by an employer if such amount is designated as an amount paid by the employee or if the amount is paid as a consequence of the employee's individual choice in return for a reduction in his compensation or for foregoing an increase in compensation.".

(3) Effective date.—The amendments made by this subsection shall apply with respect to taxable years beginning after December 31, 1973.

(k) Technical Amendments.—

(1) Information with respect to pension, profit sharing and stock bonus plans.—Subpart A of part III of subchapter A of chapter 61 (relating to information returns) is amended by redesignating section 6040 as section 6040A and inserting after section 6039 the following section:

"SEC. 6040. INFORMATION REQUIRED IN CONNECTION WITH CERTAIN PLANS OF DEFERRED COMPENSATION.

"(a) In General.—Every employer who establishes or maintains a plan of deferred compensation described in part I of subchapter D of chapter 1, or the administrator of the plan, shall file an annual return stating such information as the Secretary or his delegate may by forms or regulations prescribe with respect to the qualification, financial condition and operations of the pension, annuity, profit-sharing, stock bonus, or bond purchase plan established or maintained by such employer; except that, in the discretion of the Secretary or his delegate, the employer may be relieved from stating in its return any information which is reported in returns filed by an organization forming a part of such plan.

"(b) EMPLOYER.—For purposes of this section, the term 'employer' includes a person described in section 401 (c)(4) and an individual who establishes an individual retirement account described in section 408. The term 'administrator' means the person or persons described in section 3(15) of the Welfare and Pension Plans Disclosure Act.

"(c) CROSS REFERENCE.—For provisions relating to penalties for failure to file a return required by this section, see section 6652(f).".

(2) PUBLICITY OF RETURNS.—

(A) Section 6103 (relating to publicity of returns and disclosure of information as to persons filing income tax returns) is amended by adding at the end thereof a new subsection (g) to read as follows:

"(g) INFORMATION WITH RESPECT TO PENSION, PROFIT-SHARING AND STOCK BONUS PLANS.—Any return filed under section 6033 or 6040 with respect to a plan of deferred compensation (or copy thereof) or under 6051 (d) with respect to wages paid to an employee shall be open to inspection by the proper officers of the Pension Benefit Guaranty Corporation.".

(B) Section 6104 (relating to publicity of information required from certain exempt organizations and certain trusts) is amended by—

(i) striking out "(A) IN GENERAL.—" in subsection (a)(1) and inserting in lieu thereof "(i) EXEMPT ORGANIZATIONS GENERALLY.—",

(ii) inserting "(A) IN GENERAL.—" in subsection (a) immediately after "(1) PUBLIC INSPECTION.—",

(iii) inserting the following clause immediately before subparagraph (B) of subsection (a)(1):

"(ii) PENSION, PROFIT-SHARING, AND STOCK BONUS PLANS.—An application filed with respect to the qualification of a pension, profit-sharing, or stock bonus plan under section 401(a), 404(a)(2), or 405(a), covering more than 25 persons or with respect to the exemption from taxation under section 501(a) of an organization forming a part of such a plan, together with any papers submitted in support of such application, shall be open to public inspection at such times and in such places as the Secretary or his delegate may prescribe.", and

(iv) striking out "and 6056" in subsection

(b) and inserting in lieu thereof "6040, and 6056".

(3) PENALTIES.—Section 6652 (relating to failure to file certain information returns) is amended by adding at the end thereof the following new subsection:

"(f) INFORMATION REQUIRED IN CONNECTION WITH CERTAIN PLANS OF DEFERRED COMPENSATION.—In the case of failure to file a return required under section 6040 (relating to information required in connection with certain plans of deferred compensation) or 6047 (relating to information relating to certain trusts and annuity and bond purchase plans) on the date and in the manner prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause there shall be paid (on notice and demand by the Secretary or his delegate and in the same manner as tax) by the person failing so to file, $10 for each day during which such failure continues, but the total amount imposed hereunder on any person for failure to file any return shall not exceed $5,000.".

(l) EXCESS CONTRIBUTIONS.—Section 401(e)(1)(B) is amended by striking out clause (ii) and inserting in lieu thereof:

"(ii) with respect to any plan other than a defined benefit plan, the amount of any con-

tribution made by any owner-employee (as an employee) at a rate which exceeds the rate of contributions permitted to be made by employees other than owner-employees;"

(m) PLANS BENEFITING SELF-EMPLOYED INDIVIDUALS.—Section 401(c) (relating to definitions and rules relating to self-employed individuals and owner-employees) is amended by adding at the end thereof the following new paragraph:

"(6) ADDITIONAL REQUIREMENTS FOR QUALIFICATION OF TRUSTS AND PLANS BENEFITING SELF-EMPLOYED INDIVIDUALS.—A trust forming part of a pension or profit-sharing plan which provides contributions or benefits for employees some or all of whom are employees within the meaning of paragraph (1) shall constitute a qualified trust only if—

"(A) under the plan, forfeitures attributable to contributions made on behalf of an employee other than an employee within the meaning of paragraph (1) may not inure to the benefit of any individual who, at any time during the period beginning with the taxable year for which the contribution is made and ending with the taxable year during which the forfeiture occurs, is an employee within the meaning of paragraph (1),

"(B) in the case of a defined benefit pension plan, a separate account is maintained with respect to all participants under the plan who are not employees within the meaning of paragraph (1) and another separate account is maintained with respect to all participants under the plan who are employees within the meaning of paragraph (1), and

"(C) it meets the requirements for a qualified trust which is a part of a defined benefit plan which provides benefits for employees, some or all of whom are employees within the meaning of subsection (c)(1) or proprietary employees within the meaning of section 412(b)(1), as those requirements are defined in subsections 401(j) and 401(k).

(n) Conforming and Clerical Amendments.—

(1) Section 6033(c) (relating to cross-references) is amended by adding at the end thereof the following:

"For provisions relating to information required in connection with certain plans of deferred compensation, see section 6040.".

(2) Section 6047 (relating to information with respect to certain trusts and annuity and bond purchase plans) is amended by striking out subsection (d) and inserting in lieu thereof the following:

"(d) Cross References.—

"(1) For provisions relating to penalties for failure to file a return required by this section, see section 6652(f).

"(2) For criminal penalty for furnishing fraudulent information, see section 7207.".

(3) Section 6051 (relating to receipts for employees) is amended by inserting after "exemption," in subsection (a) the following: "or who pays wages as defined in section 3121(a), 3306(b), or 3041(a) to an individual who is an active participant in a plan described in section 219(b)(2),".

(4) The table of sections for subpart A of part III of subchapter A of chapter 61 is amended by striking out the last item and inserting in lieu thereof the following:

"Sec. 6040. Information required in connection with certain plans of deferred compensation.
"Sec. 6040A. Cross references.".

(5) Section 62 (relating to definition of adjusted gross income) is amended by adding after paragraph (9) the following new paragraph:

"(10) Money purchase pension plans.—The deduction allowed by section 410(c).".

(6) Clerical amendments.—

(A) The table of sections for part I of subchapter D of chapter 1 as amended by sections 701

(b) and (e) of this Act is further amended by inserting at the end thereof the following new item:

"Sec. 410. Inclusion of certain employer contributions in gross income.".

(B) The table of sections for subchapter B of chapter 68 as amended by section 221(b) of this Act is further amended by inserting at the end thereof the following new item:

"Sec. 6691. Reports by employers.".

(o) EFFECTIVE DATES.—Except as otherwise provided in this section, the amendments made by this section shall take effect on January 1, 1974.

Passed the House of Representatives June 27, 1973.

Attest: W. PAT JENNINGS,

Clerk.

Passed the Senate with an amendment September 19, 1973.

Attest: FRANCIS R. VALEO,

Secretary.

Mr. LONG. Mr. President, I move that the Senate insist upon its amendments and request a conference with the House, and that the Chair be authorized to appoint the conferees on the part of the Senate.

Mr. President, I withhold that motion at this time because I wish to discuss the matter with members of the Committee on Labor and Public Welfare, and I will send the motion to the desk at a later time.

The PRESIDING OFFICER. Without objection, action on the motion will be vacated.

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Mr. LONG. Mr. President, I move that the Senate insist on its amendments to H.R. 4200 and ask for a conference with the House of Representatives thereon, and that the Chair appoint the conferees on the part of the Senate.

The motion was agreed to; and the Presiding Officer appointed Mr. Long, Mr. Williams, Mr. Randolph, Mr. Nelson, Mr. Bentsen, Mr. Javits, Mr. Schweiker, Mr. Bennett, and Mr. Curtis conferees on the part of the Senate.

Mr. LONG. Mr. President, I ask unanimous consent that S. 1179, the bill that was used for procedural purposes in the course of the consideration of H.R. 4200, be indefinitely postponed.

The PRESIDING OFFICER. Without objection, it is so ordered.

[From the Congressional Record—House, Oct. 2, 1973]

Reports of Committees on Public Bills and Resolutions

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

* * * * * * *

Mr. Perkins. Committee on Education and Labor. House Resolution 2. A bill to revise the Welfare and Pension Plans Disclosure Act; with amendment (Rept. No. 93–533). Referred to the Committee of the Whole House on the State of the Union.

* * * * * * *

[The text of H.R. 2 as reported to the House by Mr. Perkins, and H. Rept. 93–533 follow:]

Union Calendar No. 234

93D CONGRESS
1ST SESSION

H. R. 2

[Report No. 93–533]

IN THE HOUSE OF REPRESENTATIVES

JANUARY 3, 1973

Mr. DENT (for himself and Mr. PERKINS) introduced the following bill; which was referred to the Committee on Education and Labor

OCTOBER 2, 1973

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To revise the Welfare and Pension Plans Disclosure Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, ~~That this Act may be cited as the "Employee Benefit Security Act".~~

~~FINDINGS AND DECLARATION OF POLICY~~

~~SEC. 2. (a) The Congress finds that the growth in size, scope, and numbers of employee benefit plans in recent years has been rapid and substantial; that the operational scope and economic impact of such plans is increasingly interstate; that the continued well-being and security of millions of employees and their dependents are directly affected by~~

~~these plans; that they are affected with a national public interest; that they have become an important factor affecting the stability of employment and the successful development of industrial relations; that they have become an important factor in commerce because of the interstate character of their activities, and of the activities of their participants, and the employers, employee organizations, and other entities by which they are established or maintained; that a large volume of the activities carried on by such plans are affected by means of the mails and instrumentalities of interstate commerce; that owing to the lack of employee information and adequate safeguards concerning their operation, it is desirable in the interests of employees and their beneficiaries, and to provide for the general welfare and the free flow of commerce, that disclosure be made and safeguards be provided with respect to the establishment, operation, and administration of such plans; that they substantially affect the revenues of the United States because they are afforded preferential Federal tax treatment; that despite the enormous growth in such plans many employees with long years of employment are losing anticipated retirement benefits owing to the lack of vesting provisions in such plans; that owing to the inadequacy of current minimum standards, the soundness and stability of plans with respect to adequate funds to pay promised benefits may be endangered; that~~

~~owing to the involuntary termination of plans before requisite funds have been accumulated, employees and their dependents have been deprived of anticipated benefits; and that it is therefore desirable in the interests of employees and their beneficiaries, for the protection of the revenue of the United States, and to provide for the free flow of commerce, that minimum standards be provided assuring the equitable character of such plans and their financial soundness.~~

~~(b) It is hereby declared to be the policy of this Act to protect interstate commerce and the interests of participants in employee benefit plans and their beneficiaries, by requiring the disclosure and reporting to participants and beneficiaries of financial and other information with respect thereto, by establishing standards of fiduciary conduct, responsibility, and obligation upon all persons who exercise any powers of control, management, or disposition with respect to employee benefit funds or have authority or responsibility to do so, or have authority or responsibility in the administration of employee benefit plans, and by providing for appropriate remedies, sanctions, and ready access to the Federal courts.~~

~~(c) It is hereby further declared to be the policy of this Act to protect interstate commerce, the Federal taxing power, and the interests of participants in private pension~~

~~plans and their beneficiaries by improving the equitable character and the soundness of such plans by requiring them to vest the accrued benefits of employees with significant periods of service, to meet minimum standards of funding, and to protect the vested rights of participants against losses due to involuntary plan termination through the establishment of vested liability insurance.~~

~~DEFINITIONS~~

~~SEC. 3. When used in this Act—~~

~~(1) The term "employee welfare benefit plan" means any plan, fund, or program which is communicated or its benefits described in writing to the employees, and which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, for the purpose of (A) providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment, or vacation benefits, apprenticeship or other training programs, day care centers, scholarship funds, prepaid legal services, or (B) in the case of a fund subject to the restrictions of section 302(c) of the Labor-Management Relations Act providing any other benefit which may be permitted by section 302(c)(5) or 302(c)(6) of that Act.~~

~~(2) The term "employee pension benefit plan" or~~

~~“pension plan” means any plan, fund, or program which is communicated or its benefits described in writing to the employees, and which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, for the purpose of providing for its participants or their beneficiaries, by the purchase of insurance or annuity contracts or otherwise, retirement benefits, and includes any deferred profit-sharing plan which provides benefits at or after retirement.~~

~~(3) The term “employee benefit plan” or “plan” means an employee welfare benefit plan or an employee pension benefit plan or a plan providing both welfare and pension benefits.~~

~~(4) The term “employee benefit fund” or “fund” means a fund of money or other assets maintained pursuant to or in connection with an employee benefit plan and includes employee contributions withheld but not yet paid to the plan by the employer. The term does not include: (1) any assets of an investment company subject to regulation under the Investment Company Act of 1940; (2) premiums, subscription charges, or deposits received and retained by an insurance carrier or service or other organization, except for any separate account established or maintained by an insurance carrier.~~

~~(5) The term “employee organization” means any~~

~~labor union or any organization of any kind, or any agency or employee representation committee, association, group, or plan, in which employees participate and which exists for the purpose in whole or in part, of dealing with employers concerning an employee benefit plan, or other matters incidental to employment relationships; or any employees' beneficiary association organized for the purpose, in whole or in part, of establishing such a plan.~~

~~(6) The term "employer" means any person acting directly as an employer or indirectly in the interest of an employer in relation to an employee benefit plan, and shall include any State or political subdivision of a State and includes a group or association of employers acting for an employer in such capacity.~~

~~(7) The term "employee" means any individual employed by an employer.~~

~~(8) The term "participant" means any employee or former employee of an employer or any member or former member of an employee organization who is or may become eligible to receive a benefit of any type from an employee benefit plan, or whose beneficiaries may be eligible to receive any such benefit.~~

~~(9) The term "beneficiary" means a person designated by a participant or by the terms of an employee benefit plan who is or may become entitled to a benefit thereunder.~~

~~(10) The term "person" means an individual, partnership, corporation, mutual company, joint-stock company, trust, unincorporated organization, association, or employee organization.~~

~~(11) The term "State" includes any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331–1343).~~

~~(12) The term "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between any foreign country and any State, or between any State and any place outside thereof.~~

~~(13) The term "industry or activity affecting commerce" means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce and includes any activity or industry "affecting commerce" within the meaning of the Labor-Management Relations Act, 1947, as amended, or the Railway Labor Act, as amended.~~

~~(14) The term "Secretary" means the Secretary of Labor.~~

~~(15) The term "party in interest" means any administrator, officer, trustee, custodian, counsel, or employee~~

~~of any employee benefit plan, or a person providing benefit plan services to any such plan, or an employer any of whose employees are covered by such a plan or any person controlling, controlled by, or under common control with, such employer or officer or employee or agent of such employer or such person, or an employee organization having members covered by such plan, or an officer or employee or agent of such an employee organization having members covered by such plan, or a relative, partner or joint venturer of any of the above described persons.~~

~~(16) The term "relative" means a spouse, ancestor, children, grandchildren, brother, sister, son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law.~~

~~(17) The term "administrator" means—~~

~~(a) the person specifically so designated by the terms of the plan, collective bargaining agreement, trust agreement, contract, or other instrument, under which the plan is operated; or~~

~~(b) in the absence of such designation, (A) the employer in the case of an employee benefit plan established or maintained by a single employer, (B) the employee organization in the case of a plan established or maintained by an employee organization, or (C) the association, committee, joint board of trustees, or~~

~~other similar group of representatives of the parties who established or maintain the plan, in the case of a plan established or maintained by two or more employers or jointly by one or more employers and one or more employee organizations.~~

~~(18) The term "separate account" means an account established or maintained by an insurance company under which income, gains, and losses, whether or not realized, from assets allocated to such account, are, in accordance with the applicable contract, credited to or charged against such account without regard to other income, gains, or losses of the insurance company.~~

~~(19) The term "adequate consideration" when used in section 111 means (A) in the case of a security for which there is a generally recognized market, either (i) the price of the security prevailing on a national securities exchange which is registered with the Securities and Exchange Commission, or (ii) if the security is not traded on such a national securities exchange, a price not less favorable to the fund than the offering price for the security as established by the current bid and asked prices quoted by persons independent of the issuer; and (B) in the case of an asset other than a security for which there is a generally recognized market,~~

~~the fair market value of the asset as determined, in good faith by the trustee or administrator.~~

~~(20) The term "nonforfeitable pension benefit" means a legal claim obtained by a participant or his beneficiary to that part of an immediate or deferred pension benefit, which notwithstanding any conditions subsequent which could affect receipt of any benefit flowing from such right, arises from the participants service and is no longer contingent on continued service.~~

~~(21) The term "accrued benefit" means that benefit which, irrespective of whether such benefit is nonforfeitable, is equal to: (1) in the case of a profit-sharing or money purchase type pension plan, the amount of a participant; (2) in the case of a unit benefit-type pension plan, the benefit units credited to a participant; or (3) in the case of other types of employee benefit plans that portion of the prospective benefit as constitutes the participants accrued benefit under the terms of the plan or as the secretary may by rule or regulation provide.~~

~~(22) The term "security" has the same meaning as such term has under section 2(1) of the Securities Act of 1933 (15 U.S.C. 77b(1)).~~

~~(23) The term "fiduciary" means any person who exercises any power of control, management, or disposition or renders investment advice for a fee or other compensation,~~

~~direct or indirect, with respect to any moneys or other property of an employee benefit fund, or has any authority or responsibility to do so, or who has any authority or responsibility in the administration of an employee benefit plan.~~

~~(24) The term "market value" or "value" means fair market value where available, and otherwise the fair value as determined in good faith by the trustee or administrator.~~

~~(25) The term "regular retirement benefit" means only that benefit payable under the plan in the event of retirement at the regular retirement age.~~

~~(26) The term "accrued portion of the regular retirement benefit" means—~~

~~(a) Under a plan which provides for payment of a fixed benefit, that portion of such benefit which would have been payable at regular retirement age, computed as of the day of termination of employment, as the number of years of credited service under the plan bears to the total possible years of credited service had employment continued to the regular retirement age.~~

~~(b) Under a plan which provides for benefits based solely upon the amount contributed to the employee's account, the amount credited to such account toward~~

~~regular retirement benefits at the time of termination of employment.~~

~~(27) The term "regular retirement age" means not later than age sixty-five.~~

~~(28) The term "vested liabilities" means the present value of the immediate or deferred benefits available at regular retirement age for participants and their beneficiaries which are nonforfeitable and for which all conditions of eligibility have been fulfilled under the provisions of the plan prior to its termination.~~

~~(29) The term "current value" means fair market value where available and otherwise the fair value as determined in good faith by the trustee or administrator, assuming an orderly liquidation as of the statement date.~~

~~(30) The term "present value" means either cost, adjusted for subsequent price fluctuations, or market value, adjusted to reflect anticipated events. Such adjustments shall conform to such rules and regulations as the Secretary may provide.~~

~~TITLE I—FIDUCIARY RESPONSIBILITY AND DISCLOSURE~~

~~COVERAGE~~

~~SEC. 101. (a) Except as provided in subsection (b), this title shall apply to any employee benefit plan if it is established or maintained (1) by any employer engaged in~~

~~commerce or in any industry or activity affecting commerce or (2) by any employee organization in which employees engaged in commerce or in any industry or activity affecting commerce participate or (3) by both.~~

~~(b) This title shall not apply to an employee benefit plan if—~~

~~(1) such plan is administered by the Federal Government or by an agency or instrumentality of the Federal Government;~~

~~(2) such plan was established and is maintained solely for the purpose of complying with applicable workmen's compensation laws or unemployment compensation disability insurance laws; or~~

~~(3) such plan covers not more than eight participants, except that participants and beneficiaries of such a plan shall be entitled to maintain an action to recover benefits or to clarify their rights to future benefits as provided in section 106(e)(1)(B).~~

~~DUTY OF DISCLOSURE AND REPORTING~~

~~SEC. 102. (a) The administrator of an employee benefit plan shall cause to be published in accordance with section 105 to each participant or beneficiary covered thereunder (1) a description of the plan and (2) an annual financial report. Such description and such report shall contain the information required by sections 103 and 104 of this title~~

~~in such form and detail as necessary to fully and fairly disclose all pertinent facts.~~

~~(b) The Secretary shall require the filing of special terminal reports on behalf of an employee benefit plan which is winding up its affairs. Such reports shall be required to be filed regardless of the number of participants remaining in the plan and shall be on such forms and filed in such manner as the Secretary may by regulation prescribe.~~

~~DESCRIPTION OF THE PLAN~~

~~SEC. 103. (a) A description of any employee benefit plan shall be published as required herein within ninety days after the establishment of such plan or within ninety days after such plan becomes subject to the title, whichever is later. Descriptions (conforming all amendments to the plan) shall be republished as provided herein once every five years subsequent to initial publication.~~

~~(b) The description of the plan shall be comprehensive and shall be written in a manner calculated to be understood by the average plan participant and shall include the name and type of administration of the plan; the name and address of the administrator; names, titles, and addresses of any trustee or trustees (if they are persons different from the administrator); a description of any relevant collective bargaining agreement in which the plan is mentioned; the schedule of benefits; a description of the provisions~~

~~providing for nonforfeitable pension benefits; the source of the financing of the plan and the identity of any organization through which benefits are provided; whether the records of the plan are kept on a calendar year basis, or on a policy or other fiscal year basis, and if on the latter basis, the date of the end of such policy or fiscal year; the procedures to be followed in presenting claims for benefits under the plan and the remedies available under the plan for the redress of claims which are denied in whole or in part. All amendments to the plan shall be included in the description on and after the effective date of such amendments.~~

~~ANNUAL REPORTS~~

~~SEC. 104. (a) (1) An annual report shall be published with respect to any employee benefit plan to which this title applies. Such report shall be published as required under section 105, within one hundred and fifty days after the end of the calendar, policy, or fiscal year on which the records of the plan are kept.~~

~~(2) If some or all of the benefits under the plan are provided by an insurance carrier or other organization, such carrier or organization shall certify to the administrator of such plan, within one hundred and twenty days after the end of each calendar, policy, or other fiscal year, as the case~~

~~may be, such information necessary to enable such administrator to comply with the requirements of this Act.~~

~~(3) (A) Except as provided in subparagraph (B), the administrator of an employee benefit plan shall engage, on behalf of all plan participants, an independent qualified public accountant who shall conduct such an examination of the books and records of the plan and fund as may be necessary to enable him to certify whether the financial statements required by section 104 (b) have been prepared according to generally accepted standards of accounting. Such examination shall be conducted in the form of an audit in accordance with generally accepted auditing standards, and shall involve such tests of the books and records of the plan and fund as are considered necessary by the auditor. The certification by the independent qualified public accountant shall be made a part of the annual report.~~

~~(B) The opinion required by subparagraph (A) need not be expressed as to any statements prepared by a bank or similar institution or insurance carrier as required by section 104 (b) (9) if such statements are certified by the bank, similar institution, or insurance company as accurate are made a part of the annual report.~~

~~(C) For purposes of subparagraph (A) of this paragraph, the term "qualified public accountant" means—~~

~~(i) a person who is a certified public accountant certified by a regulatory authority of a State,~~

~~(ii) a person who is a licensed public accountant, licensed on or before December 31, 1973, by a regulatory authority of a State, or~~

~~(iii) with respect to audits performed before January 1, 1976, any other person who meets, in the opinion of the Secretary, standards of education and experience which are representative of the highest prescribed by the licensing authorities of the several States which provide for the continuing licensing of public accountants and which are prescribed by the Secretary in appropriate regulations;~~

~~except that if the Secretary deems it necessary in the public interest, he may prescribe by regulation higher standards than those required for the practice of public accountancy by the regulatory authorities of the States, and a person shall be considered a qualified public accountant for purposes of subparagraph (A) only if he meets such standards.~~

~~(b) A report under this section shall include—~~

~~(1) the amount contributed by each employer; the amount contributed by the employees; the amount of benefits paid or otherwise furnished; the number~~

~~of employees covered; and in the case of a multiemployer plan the number of covered employees per employer; a statement of assets, liabilities, receipts, and disbursements of the fund; a detailed statement of the salaries and fees and commissions charged to the plan, to whom paid, in what amount, and for what purposes; the name and address of each fiduciary, his official position with respect to the plan, his relationship to the employer of the employees covered by the plan, or the employee organization, and any other office, position, or employment he holds with any party in interest;~~

~~(2) a schedule of all investments of the fund showing as of the end of the fiscal year~~:

~~(A) A statement showing the assets of the fund aggregated by types of investment which shall be valued at their current value, as well as the same data, displayed in comparative form for the end of the previous fiscal year.~~

~~(B) A statement of all receipts and disbursements during the preceding twelve-month period aggregated by general sources and applications.~~

~~(C) A statement listing any changes in appointment of trustee, qualified public accountant, insurance carrier, actuary, or administrator and the reason for the change~~.

~~(3) a schedule of all assets held for investment purposes aggregated and identified by issuer, borrower or lessor or similar party to the transaction, maturity date, rate of interest, collateral, par or maturity value, cost, and current value;~~

~~(4) a schedule of each receipt and disbursement from the fund during the year covered by the report. The schedule shall be prepared in chronological order by the date of the transaction involved and shall identify each transaction by transaction date, description of the asset involved, specifying issuer, borrower or lessor or similar party to the transaction, rate of interest, maturity date, collateral, par or maturity value and shall enumerate any expense occasioned by the transaction and the proceeds or cost to the fund. In the case of regular and recurring transactions such as receipt of contributions or benefit payments these may be aggregated on a periodic basis, at least monthly. In the case of a sale, exchange, or redemption of an investment asset the cost of the asset must also be shown. In the case of securities where a transaction involves more than a single cost or price the average unit cost or price may be applied to the total units involved and the price or cost aggregated on that basis;~~

~~(5) a schedule of each transaction involving a per-~~

~~son known to be party in interest, an indication of each asset purchased, sold, or exchanged; the purchase or selling price; expenses incurred in connection with the purchase, sale, or exchange; the cost of the asset, the present value of the asset, and the net gain (or loss) on each sale; the identity of the seller in the case of a purchase, or the identity of the purchaser in the case of a sale and his relationship to the plan, the employer, or any employee organization;~~

~~(6) a schedule of all loans made from the fund during the reporting year or outstanding at the end of the year, and a schedule of principal and interest payments received by the fund during the reporting year, aggregated in each case by type of loan, and in addition a separate schedule showing as to each loan which—~~

~~(A) was made to a party in interest, or~~

~~(B) was in default, or~~

~~(C) was written off during the year as uncollectable,~~

~~unless such loan was a loan to a participant in a profit-sharing plan and such loan did not exceed the value of his vested benefit either at the time that such loan was made or on the date of the report, and was not at terms more favorable than those available to other plan participants, the following information: the original principal~~

~~amount of the loan, the amount of principal and interest received during the reporting year, the unpaid balance, the identity and address of the obligor, a detailed description of the loan (including date of making and maturity, interest rate, the type and value of collateral and other material terms), the amount of principal and interest overdue (if any) and an explanation thereof;~~

~~(7) a list of all leases with—~~

~~(A) persons other than parties in interest who are in default, and~~

~~(B) any party in interest,~~

~~including information as to the type of property leased (and, in the case of fixed assets such as land, buildings, leasehold, and so forth, the location of the property), the identity of the lessor or lessee from or to whom the plan is leasing, the relationship of such lessors and lessees, if any, to the plan, the employer, employee organization, or any other party in interest, the terms of the lease regarding rent, taxes, insurance, repairs, expenses, and renewal options; if property is leased from persons described in (B) the amount of rental and other expenses paid during the reporting year; and if property is leased to persons described in (A) or (B), the date the leased property was purchased and its cost, date the property was leased and its approx-~~

~~imate value at such date, the gross rental receipts during the reporting period, expenses paid for the leased property during the reporting period, the net receipts from the lease, and with respect to any such leases in default, their identity, the amounts in arrears, and a statement as to what steps have been taken to collect amounts due or otherwise remedy the default;~~

~~(8) a detailed list of purchases, sales, exchanges, or any other transactions with any party in interest (including investments in securities or properties) made during the year, including information as to the asset involved, the price, any expenses connected with the transaction, the cost of the asset, the proceeds, the current value of the asset, the net gain or loss, the identity of the other party to the transaction and his relationship to the plan;~~

~~(9) if some or all of the assets of a plan or plans are held in a common or collective trust maintained by a bank or similar institution or in a separate account maintained by an insurance carrier or by a bank as trustee, the report shall include the most recent statement of assets and liabilities of such common or collective trust, and in the case of a separate account or trust, such other information as is required under paragraphs (2), (3), (4), (5), (6), and (7) of this subsection. In~~

~~such case the bank or similar institution or insurance carrier shall certify to the administrator of such plan or plans, within one hundred and twenty days after the end of each calendar, policy, or other fiscal year, as the case may be, the information necessary to enable the plan administrator to comply with the requirements of this title;~~

~~(10) if the assets of the plan are held in more than one fund, then the schedule required under subparagraph (4) may be prepared for each fund or at the option of the administrator, the required information may be prepared for all such funds in one schedule treating the assets as though they were held in a single fund.~~

~~(c) If the only assets from which claims against an employee benefit plan may be paid are the general assets of the employer or the employee organization, the report shall include (for each of the past five years) the benefits paid and the average number of employees eligible for participation.~~

~~(d) If some or all of the benefits under the plan are provided by an insurance carrier or other organization such report shall include with respect to such plan (in addition to the information required by subsection (b)) the following:~~

~~(1) the premium rate or subscription charge and the total premium or subscription charges paid to each~~

~~such carrier or organization and the approximate number of persons covered by each class of such benefits;~~

~~(2) the total amount of premiums received, the approximate number of persons covered by each class of benefits, and the total claims paid by such carrier or other organization; dividends or retroactive rate adjustments, commissions, and administrative service or other fees or other specific acquisition costs, paid by such carrier or other organization; any amounts held to provide benefits after retirement; the remainder of such premiums; and the names and addresses of the brokers, agents, or other persons to whom commissions or fees were paid, the amount paid to each, and for what purpose: *Provided*, That if any such carrier or other organization does not maintain separate experience records covering the specific groups it serves, the report shall include in lieu of the information required by the foregoing provisions of this paragraph (A) a statement as to the basis of its premium rate or subscription charge, the total amount of premiums or subscription charges received from the plan, and a copy of the financial report of the carrier or other organization, and (B), if such carrier or organization incurs specific costs in connection with the acquisition or retention of any particular plan or plans, a detailed statement of such costs.~~

~~(e) Every employee pension benefit plan shall include with its annual report (to the extent applicable) the following information:~~

~~(1) the type and basis of funding,~~

~~(2) the number of participants, both retired and nonretired, covered by the plan,~~

~~(3) the amount of all reserves or net assets accumulated under the plan,~~

~~(4) the present value of all liabilities for all nonforfeitable pension benefits and the present value of all other accrued liabilities,~~

~~(5) the ratios of the present value of the reserves and assets described in (3) above to the liabilities described in (4) above,~~

~~(6) a copy of the most recent actuarial report, and—~~

~~(A) (i) the actuarial assumptions used in computing the contributions to a trust or payments under an insurance contract, (ii) the actuarial assumptions used in determining the level of benefits, and (iii) the actuarial assumptions used in connection with the other information required to be furnished under this section 104(e), insofar as any~~

~~such actuarial assumptions are not included in the most recent actuarial report,~~

~~(B) (i) if there is no such report, or (ii) if any of the actuarial assumptions employed in the annual report differ from those in the most recent actuarial report, or (iii) if different actuarial assumptions are used for computing contributions or payments than are used for any other purpose, a statement explaining same,~~

~~(7) a statement showing the number of participants who terminated service under the plan during the year, whether or not they retain any nonforfeitable rights, their length of service by category, and~~

~~(8) such other information as may be necessary to fully and fairly disclose all pertinent facts.~~

~~All statements required pursuant to this subsection (104 (e)) shall be certified as being in conformity with accepted principles of actuarial practice by an actuary who is a member of the American Academy of Actuaries or who meets qualifications as the Secretary may establish by regulation. Such certification shall be made a part of the annual report.~~

~~PUBLICATION~~

~~SEC. 105. (a) The administrator of any employee benefit plan subject to this Act shall file with the Secretary a copy of the plan description and each annual report. The Sec-~~

~~retary shall make copies of such descriptions and annual reports available for inspection in the public document room of the Department of Labor. The Secretary may reject any filing under this section after notice, hearing and determination by the Secretary that such filing is incomplete for the purpose of this title.~~

~~(b) Publication of the plan descriptions and annual reports required by the Act shall be made to participants and beneficiaries of the particular plan as follows:~~

~~(1) the administrator shall furnish to each plan participant or his or her beneficiaries a copy of the plan description (including all amendments or modifications thereto);~~

~~(2) the administrator shall make copies of the latest annual report and the bargaining agreement, trust agreement, contract, or other instrument under which the plan was established and is operated available for examination by any plan participant or beneficiary in the principal office of the administrator and in such other places as may be necessary to fully and fairly disclose all pertinent facts to all participants;~~

~~(3) the administrator shall furnish to each plan participant; or their beneficiaries a copy of the statements and schedules described in section 104 (b) (2) (A), (B), (C) and section 104 (c) (5) and such other~~

~~material as is necessary to fairly summarize the latest annual report; and~~

~~(4) the administrator shall, upon written request of any participant or beneficiary, furnish a complete copy of the latest annual report, the bargaining agreement, trust agreement, contract, or other instruments under which the plan is established and operated. The administrator may make a reasonable change to cover the cost of furnishing such complete copies.~~

~~(c) The administrator of an employee pension benefit plan shall furnish to any plan participant at least once each year a statement indicating (1) whether or not such person has a nonforfeitable right to receive a benefit, and (2) the nonforfeitable benefits, if any, which have accrued or the earliest date on which benefits will become nonforfeitable.~~

~~(d) Upon the termination of service under the plan of a participant having a right to a benefit payable at a later date, the plan administrator shall furnish to the participant or his surviving beneficiary a statement setting forth his rights and privileges under the plan. The statement shall be in such form, be furnished and filed in such manner, and shall contain such information, including but not limited to the nature and amount of benefits to which he is entitled, the name and address of the entity responsible for payment, the date when payment shall begin and the procedure for filing~~

~~his claim, as the Secretary may by regulation prescribe. The administrator shall, upon termination of a vested participant's employment prior to regular retirement age, report to the Secretary of Health, Education, and Welfare such information as the Secretary of Health, Education, and Welfare may prescribe by regulation to facilitate notification of vested rights to such participants or their beneficiaries. The Secretary of Labor shall reimburse the Secretary of Health, Education, and Welfare for use by the latter of personnel and facilities in the performance of his functions under this subsection.~~

~~ENFORCEMENT~~

~~SEC. 106. (a) Any person who intentionally violates any provision of section 103, 104, 105, 106, 107, or 110 of this title shall be fined not more than $1,000, or imprisoned not more than six months, or both. Any person who intentionally violates any provision of section 108 of this title shall be fined not more than $5,000 or imprisoned not more than two years, or both. Any person who intentionally violates any provision of section 111 (b) (2) shall be fined not more than $10,000, or imprisoned not more than five years, or both.~~

~~(b) Any plan administrator who fails or refuses to comply with a request as provided in section 105 within thirty days (unless such failure or refusal results from matters~~

~~reasonably beyond the control of the administrator) by mailing the material requested to the last known address of the requesting participant or beneficiary may in the court's discretion be personally liable to such participant or beneficiary in the amount of up to $50 a day from the date of such failure or refusal, and the court may in its discretion order such other relief as it deems proper.~~

~~(c) The Secretary shall have power in order to determine whether any person has violated or is about to violate any provision of this title, to make an investigation and in connection therewith he may require the filing or supporting schedules of the financial information required to be furnished under section 103 or 104 of this title and may enter such places, inspect such records and accounts, and question such persons as he may deem necessary to enable him to determine the facts relative to such investigation. The Secretary may report to interested persons or officials concerning the facts required to be shown in any report required by this title and concerning the reasons for failure or refusal to file such a report or any other matter which he deems to be appropriate as a result of such an investigation.~~

~~(d) For the purposes of any investigation provided for in this title, the provisions of sections 9 and 10 (relating to the attendance of witnesses and the production of books, records, and documents) of the Federal Trade Commission~~

~~Act of September 16, 1914, as amended (15 U.S.C. 49, 50), are hereby made applicable to the jurisdiction, powers, and duties of the Secretary or any officers designated by him.~~

~~(e) Civil actions under this title may be brought—~~

~~(1) by a participant or beneficiary—~~

~~(A) for the relief provided for in section 106 (b), or~~

~~(B) to recover benefits due him under the terms of his plan or to clarify his rights to future benefits under the terms of the plan;~~

~~(2) by the Secretary, or by a participant, beneficiary or fiduciary for appropriate relief under section 111(d); or~~

~~(3) by the Secretary, to enjoin any act or practice which appears to him to violate any provision of this title.~~

~~(f) (1) An employee benefit plan may sue or be sued as an entity. Service of summons, subpena, or other legal process of a court upon trustee or administrator of an employee benefit plan in his capacity as such shall constitute service upon the employee benefit plan.~~

~~(2) Any money judgment against an employee benefit plan shall be enforceable only against a plan as an entity and shall not be enforceable against any other person,~~

~~unless liability against such person is established in his individual capacity under this title~~.

~~(g) (1) Civil actions under this title brought by a participant or beneficiary may be brought in any court of competent jurisdiction, State or Federal.~~

~~(2) Where such an action is brought in a district court of the United States, it may be brought in the district where the plan is administered, where the breach took place, or where a defendant resides or may be found, and process may be served in any other district where a defendant resides or may be found~~.

~~(3) Notwithstanding any other law, the Secretary shall have the right to remove an action from a State court to a district court of the United States, if the action is one seeking relief of the kind the Secretary is authorized to sue for herein. Any such removal shall be prior to the trial of the action and shall be to a district court where the Secretary could have initiated such an action~~.

~~(h) The district courts of the United States shall have jurisdiction, without respect to the amount in controversy~~, ~~to grant the relief provided for in section 106(e) (2) and (3) in any action brought by the Secretary. In any action brought under section 106(e) by a participant or beneficiary~~, ~~the jurisdiction of the district court shall be subject to the~~

~~requirements contained in section 1331 of title 28, United States Code.~~

~~(i) (1) In any action by a participant or beneficiary, the court in its discretion may allow a reasonable attorney's fee and costs of action to either party.~~

~~(2) Except as to actions brought pursuant to section 106 (e) (1) (B) and actions brought by the Secretary pursuant to section 106 (e) (2) and (3), no action shall be brought except upon leave of the court obtained upon verified application and for good cause shown, which application may be made ex parte.~~

~~(3) A copy of the complaint in any action by a participant or beneficiary shall be served upon the Secretary by certified mail who shall have the right, in his discretion, to intervene in the action.~~

~~(j) In order to avoid unnecessary expense and duplication of functions among Government agencies, the Secretary shall make such arrangements or agreements for cooperation or mutual assistance in the performance of his functions under this title and the functions of any such agency as he may find to be practicable and consistent with law. The Secretary may utilize the facilities or services of any department, agency, or establishment of the United States or of any State or political~~

~~subdivision of a State, including the services of any of its employees, with the lawful consent of such department, agency, or establishment; and each department, agency, or establishment of the United States is authorized and directed to cooperate with the Secretary and, to the extent permitted by law, to provide such information and facilities as he may request for his assistance in the performance of his functions under this title. However, the Secretary shall not delegate any of his responsibilities under the Act. The Secretary shall immediately forward to the Attorney General or his representative any information coming to his attention in the course of the administration of this Act which may warrant consideration for criminal prosecution under the provisions of this title or other Federal law.~~

~~REPORTS MADE PUBLIC INFORMATION~~

~~SEC. 107. The contents of the descriptions and regular annual reports filed with the Secretary pursuant to this title shall be public information, and the Secretary, where to do so would protect the interests of participants or beneficiaries of a plan, may publish any such information and data. The Secretary may use the information and data for statistical and research purposes, and compile and publish such studies, analyses, reports, and surveys based thereon as he may deem appropriate.~~

~~RETENTION OF RECORDS~~

~~SEC. 108. Every person required to file any description or report or to certify any information therefor under this Act shall maintain records on the matters of which disclosure is required which will provide in sufficient detail the necessary basic information and data from which the documents thus required may be verified, explained, or clarified, and checked for accuracy and completeness, and shall include vouchers, worksheets, receipts, and applicable resolutions, and shall keep such records available for examination for a period of not less than six years after the filing of the documents based on the information which they contain.~~

~~RELIANCE ON ADMINISTRATIVE INTERPRETATIONS AND FORMS~~

~~SEC. 109. In any criminal action or proceeding under section 106 based on any act or omission in alleged violation of sections 102 through 110 of this Act, no person shall be subject to any liability or punishment for or on account of the failure of such person to (1) comply with such provisions of this title if he pleads and proves that the act or omission complained of was in good faith, in conformity with, and in reliance on any written interpretation or opinion of the Secretary, or (2) publish and file any information required by any provision of this title if~~

~~he pleads and proves that he published and filed such information in good faith, and in conformity with the rulings and regulations of the Secretary issued under this title regarding the filing of such reports. Such a defense, if established, shall be a bar to the action or proceeding, notwithstanding that (A) after such act or omission, such interpretation or opinion is modified or rescinded or is determined by judicial authority to be invalid or of no legal effect, or (B) after publishing or filing the description and annual reports, such publication or filing is determined by judicial authority not to be in conformity with the requirements of this title.~~

~~BONDING~~

~~SEC. 110. (a) Every person subject to the provisions of section 111 of this title and every person who handles funds or other property of an employee benefit plan shall be bonded as herein provided; except that, where such plan is one under which the only assets from which benefits are paid are the general assets of a union or of an employer, the administrator, officers, and employees of such plan shall be exempt from the bonding requirements of this section. The amount of such bond shall be fixed at the beginning of each calendar, policy, or other fiscal year, as the case may be, which constitutes the reporting year of such plan. Such amount shall be not less than 10 per centum of the amount~~

~~of funds handled, determined as herein provided, except that any such bond shall be in at least the amount of $1,000 and no such bond shall be required in an amount in excess of $500,000: *Provided*, That the Secretary, after due notice and opportunity for hearing to all interested parties, and after consideration of the record, may prescribe an amount in excess of $500,000, which in no event shall exceed 10 per centum of the funds handled. For purposes of fixing the amount of such bond, the amount of funds handled shall be determined by the funds handled by the person, group, or class to be covered by such bond and by their predecessor or predecessors, if any, during the preceding reporting year, or if the plan has no preceding reporting year, the amount of funds to be handled during the current reporting year by such person, group, or class, estimated as provided in regulations of the Secretary. Such bond shall provide protection to the plan against loss by reason of acts of fraud or dishonesty on the part of such administrator, officer, or employee, directly or through connivance with others. Any bond shall have as surety thereon a corporate surety company which is an acceptable surety on Federal bonds under authority granted by the Secretary of the Treasury pursuant to the Act of July 30, 1947 (6 U.S.C. 6-13). Any bond shall be in a form or of a type approved by the Secretary, including individual~~

~~bonds or schedule or blanket forms of bonds which cover a group or class.~~

~~(b) It shall be unlawful for any administrator, officer, or employee to whom subsection (a) applies, to receive, handle, disburse, or otherwise exercise custody or control of any of the funds or other property of any employee benefit plan, without being bonded as required by subsection (a) and it shall be unlawful for any administrator, officer, or employee of such plan, or any other person having authority to direct the performance of such functions, to permit such functions, or any of them, to be performed by any such person, with respect to whom the requirements of subsection (a) have not been met.~~

~~(c) It shall be unlawful for any person to procure any bond required by subsection (a) from any surety or other company or through any agent or broker in whose business operations such plan or any party in interest in such plan has any control or significant financial interest, direct or indirect.~~

~~(d) Nothing in any other provision of law shall require any person, required to be bonded as provided in subsection (a) because he handles funds or other property of an employee benefit plan, to be bonded insofar as the handling by such person of the funds or other property of such plan is concerned.~~

~~(c) The Secretary shall from time to time issue such regulations as may be necessary to carry out the provisions of this section. When, in the opinion of the Secretary, the administrator of a plan offers adequate evidence of the financial responsibility of the plan, or that other bonding requirements would provide adequate protection of the beneficiaries and participants, he may exempt such plan from the requirements of this section.~~

~~FIDUCIARY RESPONSIBILITY~~

~~SEC. 111. (a) (1) Every employee benefit plan shall be deemed to be a trust. The assets of such a fund shall never inure to the benefit of any employer and shall be held for the exclusive purposes of (A) providing benefits to participants in the plan and their beneficiaries and (B) defraying reasonable expenses of administering the plan; except with respect to contributions which are made by an employer as a mistake of fact or which are conditioned upon Internal Revenue Service approval of the deduction of the contribution in a case in which the deduction is not approved.~~

~~(2) Every employee benefit plan shall be established pursuant to a written plan. Any employee pension benefit plan shall comprise a separate trust which provides that the funds held therein cannot be used for any purpose other than paying retirement benefits to its participants or beneficiaries, by purchase of insurance or annuity contracts or otherwise.~~

~~(b) (1) A fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and—~~

~~(A) for the exclusive purpose of:~~

~~(i) providing benefits to participants and their beneficiaries and~~

~~(ii) defraying reasonable expenses of administering the plan;~~

~~(B) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims;~~

~~(C) by diversifying the investments so as to minimize the risk of large losses unless under the circumstances it is prudent not to do so and;~~

~~(D) in accordance with the documents and instruments governing the fund insofar as is consistent with this Act.~~

~~(2) Except as permitted under section 111 (a) (1) a fiduciary shall not—~~

~~(A) deal with such fund for his own account,~~

~~(B) in his individual or any other capacity act in any transaction involving the fund on behalf of a party~~

~~whose interests are adverse to the interests of the plan or the interest of its participants or beneficiaries,~~

~~(C) receive any consideration for his own personal account from any party dealing with such fund in connection with a transaction involving the fund,~~

~~(D) permit the transfer of any property of the fund to or its use by any person known to be a party in interest for less than adequate consideration, or~~

~~(E) permit the acquisition of any property from or services by any person known to be a party in interest for more than adequate consideration.~~

~~(c) Nothing in this section shall be construed to prohibit any fiduciary from—~~

~~(1) receiving any benefit to which he may be entitled as a participant or beneficiary in the plan under which the fund was established;~~

~~(2) receiving any reasonable compensation for services rendered, or for the reimbursement of expenses properly and actually incurred, in the performance of his duties with the fund; except that no person so serving who already receive full-time pay from an employer or an association of employers, whose employees are participants in the plan under which the fund was established, or from an employee organization whose members are~~

~~participants in such plan shall receive compensation from such fund, except for reimbursement of expenses properly and actually incurred and not otherwise reimbursed; or~~

~~(3) serving in such position in addition to being an officer, employee, agent, or other representative of a party in interest.~~

~~(d) Any person who is a fiduciary with respect to a plan who breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries by this title shall be personally liable to make good to such plan any losses to the fund resulting from each breach, and to restore to such plan any profits of such fiduciary which have been made through use of assets of the fund by the fiduciary and shall be subject to such other equitable or remedial relief as the court may deem appropriate, including removal of such fiduciary. A fiduciary may also be removed for a violation of section 112 of this title.~~

~~(e) Each employee benefit plan shall contain specific provisions for the disposition of its fund assets upon termination. In the event of termination, whether under the expressed terms of the plan or otherwise, the assets of the fund shall never inure to the benefit of any employer and shall be held for the exclusive purposes of (1) providing benefits to participants in the plan and their beneficiaries and (2) defraying reasonable expenses of administering the plan, except as otherwise provided in section 111 (a) (1).~~

~~(f) When an employee benefit fund is held by and under the management and control of two or more fiduciaries each shall participate in the administration of the trust and shall use reasonable care to prevent a cofiduciary from committing a breach, notwithstanding language to the contrary in the trust agreement: *Provided, however*, That nothing herein shall preclude any agreement authorized by the trust instrument allocating specific responsibilities, obligations, or duties among fiduciaries in which event such a fiduciary to whom certain responsibilities, obligations, or duties have not been allocated shall not be liable either individually or as a fiduciary for any loss resulting to the fund arising from the acts or omissions to act on the part of another fiduciary to whom such responsibilities, obligations, or duties have been allocated: *Provided*, That such fiduciary did not actually participate in and did not have knowledge of the activities constituting a breach of the specific responsibilities, obligations, or duties allocated to any other fiduciary.~~

~~(g) No fiduciary shall be liable for a violation of this Act committed before he became a fiduciary or after he ceased to be a fiduciary.~~

~~(h) Except for situations covered in subsection (f) of this section, any provision in an agreement or instrument which purports to relieve a fiduciary from responsibility or liability for any responsibility, obligation, or duty under this title shall be void as against public policy.~~

~~(i) No action may be commenced under subsection (d) with respect to a fiduciary's breach of any responsibility, duty, or obligation, or with respect to a violation of section 112, after the earlier of—~~

~~(1) six years after the date of the breach or violation, or~~

~~(2) Three years after the earliest date (A) on which the plaintiff had actual knowledge of the breach or violation, or (B) on which a report from which he could reasonably be expected to have obtained knowledge of such breach or violation was filed with the Secretary under this title.~~

~~PROHIBITION AGAINST CERTAIN PERSONS HOLDING OFFICE~~

~~SEC. 112. (a) No person who has been convicted of, or has been imprisoned as a result of his conviction of, robbery, bribery, extortion, embezzlement, fraud, grand larceny, any crime described in section 9(a)(1) of the Investment Company Act of 1940 (15 U.S.C. 80a-9(a)(1)), or a violation of any provision of this Act, or a violation of section 302 of the Labor Management Relations Act, 1947 (29 U.S.C. 186), or a violation of chapter 63 of title 18, United States Code, or a violation of section 874, 1027, 1503, 1505, 1506, 1510, 1951, or 1954 of title 18, United States Code or a violation of the Labor-Management Reporting and Dis-~~

~~closure Act of 1959 (29 U.S.C. 401), or conspiracy to commit any such crimes or attempt to commit any such crimes, or a crime in which any of the foregoing crimes is an element, shall serve or be permitted to serve—~~

~~(1) as an administrator, officer, trustee, custodian, counsel, agent, or employee of any employee welfare or pension benefit plan, or~~

~~(2) as a consultant to any employee welfare or pension benefit plan,~~

~~during or for five years after such conviction or after the end of such imprisonment, whichever is the later, unless prior to the end of such five-year period, in the case of a person so convicted or imprisoned, (A) his citizenship rights, having been revoked as a result of such conviction, have been fully restored, or (B) the Board of Parole of the United States Department of Justice determines that such person's service in any capacity referred to in clause (1) or (2) would not be contrary to the purposes of this Act. Prior to making any such determination the Board shall hold an administrative hearing and shall give notice of such proceeding by certified mail to the State, county, and Federal prosecuting officials in the jurisdiction or jurisdictions in which such person was convicted. The Board's determination in any such proceeding shall be final. No~~

~~person shall knowingly permit any other person to serve in any capacity referred to in clause (1) or (2) in violation of this subsection. Notwithstanding the preceding provisions of this subsection, no corporation or partnership will be precluded from acting as an administrator, trustee, custodian, counsel, agent, or employee of any employee benefit plan or as a consultant to any employee, welfare, or pension benefit plan without a notice, hearing, and determination by the Secretary that such service would be inconsistent with the intention of this section.~~

~~(b) Any person who intentionally violates this section shall be fined not more than $10,000 or imprisoned for not more than one year, or both.~~

~~(c) For the purposes of this section, any person shall be deemed to have been "convicted" and under the disability of "conviction" from the date of the judgment of the trial court or the date of the final sustaining of such judgment on appeal, whichever is the later event, regardless of whether such conviction occurred before or after the date of enactment of this section.~~

~~(d) For the purposes of this section, the term "consultant" means any person who, for compensation, advises or represents an employee benefit plan or who provides other assistance to such plan, concerning the establishment of operation of such plan.~~

~~ADVISORY COUNCIL~~

~~SEC. 113. (a) There is hereby established an Advisory Council on Employee Welfare and Pension Benefit Plans (hereinafter referred to as the "Council") which shall consist of fifteen members to be appointed in the following manner: One from the insurance field, one from the corporate trust field, one accountant qualified to perform audits under section 104 (a) (3) (C) of this title, one actuary qualified to offer the certification required under section 104 (c) (8) of this title, two from management, four from labor, and two from other interested groups, all appointed by the Secretary from among persons recommended by organizations in the respective groups; and three representatives of the general public appointed by the Secretary.~~

~~(b) It shall be the duty of the Council to advise the Secretary with respect to the carrying out of his functions under this title, and to submit to the Secretary recommendations with respect thereto. The Council shall meet at least twice each year and at such other times as the Secretary requests. At the beginning of each regular session of the Congress, the Secretary shall transmit to the Senate and House of Representatives each recommendation which he has received from the Council during the preceding calendar year and a report covering his activities under the title for the preceding fiscal year, including full information as to the~~

~~number of plans and their size, the results of any studies he may have made of such plans and the title's operation and such other information and data as he may deem desirable in connection with employee welfare and pension benefit plans.~~

~~(c) The Secretary shall furnish to the Council an executive secretary and such secretarial, clerical, and other services as are deemed necessary to the conduct of its business. The Secretary may call upon other agencies of the Government for statistical data, reports, and other information which will assist the Council in the performance of its duties.~~

~~(d) Appointed members of the Council shall be paid compensation at the maximum per diem rate authorized in the current Department of Labor Appropriation Act for consultants and experts when such members are engaged in the work of the Council, including traveltime, and shall be allowed travel expenses and per diem in lieu of subsistence as authorized by law (5 U.S.C. 5703) for persons in the Government service employed intermittently and receiving compensation on a pier diem, when actually employed, basis.~~

~~EFFECT ON OTHER LAWS~~

~~SEC. 114. It is hereby declared to be the express intent of Congress that except for actions authorized by section 106 (c) (1) (B) of this Act, the provisions of this Act shall supersede any and all laws of the States and of political subdivisions thereof insofar as they may now or hereafter relate to the~~

~~fiduciary, reporting, and disclosure responsibilities of persons acting on behalf of employee benefit plans: *Provided*, That nothing herein shall be construed to exempt or relieve any person from any law of any State which regulates insurance, banking, or securities or to prohibit a State from requiring that there be filed with a State agency copies of reports required by this Act to be filed with the Secretary. Nothing herein shall be construed to alter, amend, modify, invalidate, impair, or supersede any law of the United States (other than the Welfare and Pension Plans Disclosure Act) or any rule or regulation issued under any such law.~~

~~REPEAL AND EFFECTIVE DATE~~

~~SEC. 115. (a) The Welfare and Pension Plans Disclosure Act is repealed; except that such Act shall continue to apply to any conduct which occurred before the effective date of this Act.~~

~~TITLE II—VESTING~~

~~COVERAGE~~

~~SEC. 201. (a) Except as provided in subsections (b) and (c), this title may apply to any employee pension benefit plan—~~

~~(1) if it is established or maintained by an employer engaged in commerce or in any industry or activity affecting commerce or by such employer together with any employee organization representing~~

~~employees engaged in commerce or in any industry or activity affecting commerce; or~~

~~(2) if such plan is established or maintained by any employer or by any employer together with any employee organization and if, in the course of its activities, such plan directly or indirectly, uses any means or instruments of transportation or communication in interstate commerce or the mails.~~

~~(b) This title shall not apply to any employee pension benefit plan if—~~

~~(1) such plan is administered by the Federal Government or by an agency or instrumentality of the Federal Government;~~

~~(2) such plan is established and maintained outside the United States primarily for the benefit of persons who are not citizens of the United States~~;

~~(3) such plan provides contributions or benefits for a sole proprietor or, in the case of a partnership, a partner who owns more than 10 per centum of either the capital interest or the profits interest in such partnership.~~

~~ELIGIBILITY REQUIREMENTS~~

~~SEC. 202. No pension plan subject to this title which was adopted after the effective date of this title provides as a condition for eligibility to participate in such plan a period~~

~~of employment longer than two years or attainment of an age higher than age thirty (whichever last occurs). Any pension plan subject to this title which was in effect on or before the date of enactment of this Act may retain its eligibility requirements until such plan is amended to alter the benefits payable to participants or beneficiaries or five years after the date of enactment of this Act, whichever occurs first. Thereafter, such pension plan shall comply with the eligibility requirements applicable to pension plans adopted after the date of enactment of this Act.~~

~~NONFORFEITABLE BENEFITS~~

~~SEC. 203. Every pension plan subject to this title shall provide for nonforfeitable rights to regular retirement benefits as follows:~~

~~(a) Every plan created before the date of enactment of this Act shall, in accordance with one of the following alternatives, provide that the rights of employees to receive benefits are nonforfeitable:~~

~~(1) after a specified period of service not exceeding ten years, as to the entire accrued portion of the regular retirement benefit, or~~

~~(2) after a specified period of service not exceeding ten years, as to not less than 50 per centum of the entire accrued portion of the regular retirement benefit~~, ~~which percentage shall increase at a rate equivalent to~~

~~10 percentage points for each year of service after the effective date of this title, so that the percentage will reach 100 per centum no more than five years after the effective date of this title; or~~

~~(3) after a specified period of service not to exceed twenty years, as to the entire accrued portion of the regular retirement benefit which period shall be reduced at an annual rate equivalent to the sum of—~~

~~(a) one year for each year the plan has been in effect after the effective date of this title, and~~

~~(b) at the end of the first year after the effective date of this title one year if the plan was in existence during the two years preceding the effective date of this title; at the end of the second year after the effective date of this title one year if the plan was in existence more than two years prior to the effective date of this title; at the end of the third year and so forth, one year if the plan was in existence more than four years prior to the effective date of this title, at the end of the fourth year and so forth, one year if the plan was in existence more than six years prior to the effective date of this title, at the end of the fifth year and so forth, one year if the plan was in existence more than eight years prior to the effective date of this title.~~

~~So that nine years after the effective date of this title the required period of service does not exceed ten years; or~~

~~(4) in accordance with such other provisions making nonforfeitable, after a specified period of service, the entire accrued portion of the regular retirement benefit, which are approved by the Secretary, after notice and opportunity to be heard, as substantially consistent with the purposes of this section as expressed in paragraphs (2) and (3) of this subsection.~~

~~(b) Every pension plan created on or after the date of enactment of this Act shall provide that the rights of the employees to receive benefits shall be nonforfeitable after a specified period of service not to exceed ten years.~~

~~(c) With respect to a pension plan created or operated under a collective bargaining agreement in existence as of the date of enactment of this Act but due to expire after the effective date of this title, the provisions of this title shall apply after the expiration date of such collective bargaining agreement but in no event later than one year after the effective date of this title.~~

~~(d) In computing the period of service under the plan, an employee's entire service with the employer contributing to or maintaining the plan shall be considered, except~~ the ~~following may be disregarded:~~

~~(1) service prior to age 30;~~

~~(2) service during which the employee declined to contribute to a plan requiring employee contributions;~~

~~(3) service with a predecessor of the employer contributing to or maintaining the plan (except where the plan of the predecessor has been continued in effect by the successor employer); and~~

~~(4) service broken by periods of suspension of employment, provided that the rules governing such breaks in service are not unreasonable or arbitrary as determined under regulation of the Secretary.~~

~~(e) (1) No otherwise nonforfeitable benefit shall be forfeited or impaired by any plan provision which would impose a condition subsequent to the receipt of such benefit.~~

~~(2) Nothing contained in this title shall be construed to disallow any plan provision adopted pursuant to regulations of the Secretary of the Treasury or his delegate to preclude discrimination in the event of early termination of a plan.~~

~~(f) No pension plan subject to this title to which employees contribute shall provide for forfeiture of benefits which accrued during participation in the plan by the employee and which were attributable to employer contributions, solely because of withdrawal by such employee of amounts attributable to his own contributions.~~

~~DISTRIBUTION OF NONFORFEITABLE BENEFITS TO TERMINATING PARTICIPANTS~~

~~SEC. 204. Nonforfeitable benefits accrued by terminating participants may be distributed in the manner set forth in the plan: *Provided*, That distribution of such benefits shall commence no later than the regular retirement age and that such benefits are paid in the same form as retirement benefits.~~

~~ENFORCING OF VESTING STANDARDS~~

~~SEC. 205. Whenever the Secretary finds it necessary or appropriate for the enforcement of the provisions of this title or any rule or regulation thereunder, he may require a certificate of approval with respect to the vesting provisions of any pension plan. Denial of any such certificate shall be by order of the Secretary, and only after reasonable opportunity for hearing. A certificate of approval shall be issued by the Secretary when he determines that the vesting provisions in question do not violate the requirements of this title. Whenever a certificate of approval is required for any pension plan, it shall be unlawful for the administrator of any such plan to maintain or operate such plan unless a certificate has been obtained.~~

~~EFFECTIVE DATE~~

~~SEC. 206. The provisions of this title shall become effective two years after enactment of this Act.~~

~~TITLE III—FUNDING~~

~~COVERAGE~~

~~SEC. 301. (a) Except as provided in subsections (b) and (c), this title shall apply to any employee benefit pension plan—~~

~~(1) if it is established or maintained by any employer engaged in commerce or in any industry or activity affecting commerce or by such employer together with any employee organization representing employees engaged in commerce or in any industry or activity affecting commerce; or~~

~~(2) if such plan is established or maintained by any employer or by any employer together with any employee organization and if, in the course of its activities, such plan, directly or indirectly, uses any means or instruments of transportation or communication in interstate commerce or the mails.~~

~~(b) This title shall not apply to any employee pension benefit plan if—~~

~~(1) such plan is administered by the Federal Government or by an agency or instrumentality of the Federal Government;~~

~~(2) such plan is established and maintained outside~~

~~the United States primarily for the benefit of persons who are not citizens of the United States;~~

~~(3) such plan provides contributions or benefits for a sole proprietor or in the case of a partnership, a partner who owns more than 10 per centum of either the capital interest or the profits interest in such partnership.~~

~~(c) This title shall not apply to any employee pension benefit plan if—~~

~~(1) the plan has a fixed contribution rate and does not provide an amount expected to be paid as a fixed benefit;~~

~~(2) the plan is a profit-sharing plan which provides benefit at or after retirement.~~

~~FUNDING SCHEDULE~~

~~SEC. 302. (a) Every pension plan subject to this title shall—~~

~~(1) provides for contributions to the plan in amounts necessary to meet an amount equal to the normal cost since inception of the plan plus interest on any unfunded past service costs, and~~

~~(2) maintain a minimum ratio of assets to vested liabilities according to the following schedule:~~

If the plan has been in effect (in years)	The ratio of assets to vested liabilities shall be at least (in percent)
5	20
6	24
7	28
8	32
9	36
10	40
11	44
12	48
13	52
14	56
15	60
16	64
17	68
18	72
19	76
20	80
21	84
22	88
23	92
24	96
25	100

~~(b) In the case of a plan which on the effective date of this title has been in effect for five or more years, the administrator, when he files the first funding status report required by section 303 of this Act, may choose as the required funding ratio—~~

~~(1) the ratio specified by the schedule in subsection (a) (2), or~~

~~(2) the actual funding ratio of the plan.~~

~~Beginning with the ratio thus chosen, the required ratio shall be increased by 3 percentage points each year for the next five years and 4 percentage points each year thereafter until the ratio becomes 100 per centum.~~

~~(c) A plan which on the effective date of this title has been in effect for less than five years shall become subject~~

~~to (a) (2) above as soon as the plan has been in effect for five years. The options provided in subsection (b) shall be available to a plan in this category except that the time allowed for increasing the required ratio by 3 percentage points each year shall be limited to a period equal to the number of years the plan has been in effect prior to the effective date of this title.~~

~~(d) If, after the effective date of this title, a plan which has been in existence for five or more years is amended with a resulting increase in vested liabilities, the administrator may adjust the required funding schedule according to one of the following methods:~~

~~(1) The plan's funding ratio may be decreased in proportion to the ratio which the additional vested liabilities bear to the total vested liabilities after the amendment. The resulting ratio will be increased each year by percentage point increments according to the applicable funding rate specified in subsection (a) (2) or (b).~~

~~(2) If the amendment results in a 25 per centum or greater increase in vested liabilities, the portion of vested liabilities created by the amendment may be regarded as a new plan subject to the funding schedule imposed by subsection (a) (2). In this case, the administrator shall keep separate records for ascertain-~~

~~ing the funding status of the vested liabilities created by the amendment.~~

~~FUNDING STATUS REPORTS~~

~~SEC. 303. Within one hundred and fifty days after the end of the plan's first fiscal year during which it is subject to section 302(a)(2), and within one hundred and fifty days after the end of each third fiscal year thereafter, or within one hundred and fifty days after the end of any fiscal year in which the plan is amended so as to increase vested liabilities, the administrator of the plan shall file with the Secretary a statement containing the following information:~~

~~(1) the amount of normal cost since inception of the plan plus interest on any unfunded past service costs;~~

~~(2) the total amount of the plan's vested liabilities at the close of its preceding fiscal year;~~

~~(3) the assets held by the plan as of the close of its preceding fiscal year valued at market value or by any other method approved by the Secretary pursuant to regulation;~~

~~(4) the number of years the plan has been in effect;~~

~~(5) a statement of the amount, if any, by which the assets held by the plan either exceed or fall below the amount of assets required in order for the plan to meet the funding ratio required under section 302(a)(2);~~

~~(6) such other information determined by the Secretary by regulation to be necessary for adequate disclosure of a plan's funding status.~~

~~ENFORCEMENT OF FUNDING STANDARDS~~

~~SEC. 304. (a) When the contributions to a pension plan fall below amounts necessary to meet the requirements of section 302 (a) (1), the Secretary shall require by order, after notice and opportunity for hearing, that the administrator take such steps as the Secretary shall find necessary to guarantee that the rights of each participant to benefits accrued to the date of such failure to make appropriate contributions, to the extent then funded, or the rights of each participant to the amounts credited to his account at such time, are nonforfeitable in the event of the participant's termination, except that nonforfeitable benefits resulting other than through operation of this subsection shall take priority over nonforfeitable benefits resulting exclusively from operation of this subsection with respect to any allocation of plan assets or distribution to participants.~~

~~(b) When a pension plan's ratio of assets to vested liabilities falls below the funding ratio required by section 302 (a) (2) as determined by the Secretary—~~

~~(1) the plan's vested liabilities shall not be increased by an amendment until the plan's actual funding~~

~~ratio is equal to or greater than the required funding ratio;~~

~~(2) the administrator shall inform, in writing, each person having a vested benefit as to (A) the amount of his vested benefit, (B) the portion of his vested benefit protected by assets and insurance, and (C) the portion of his vested benefit not protected by assets and insurance. Such reports shall be made annually until the plan's actual funding ratio is equal to or greater than the required funding ratio; and~~

~~(3) the administrator shall make such additional reports to the Secretary as the Secretary may by rule or regulation prescribe to aid in the enforcement of this title.~~

~~(c) When a pension plan's ratio of assets to vested liabilities falls below the funding ratio required by section 302 (a) (2) for five consecutive years the Secretary shall require by order, after notice and opportunity for hearing, that the administrator take such steps as the Secretary shall find necessary to suspend further accumulation of vested liabilities until such time as the funding deficiency has been removed: *Provided, however,* That the Secretary may, after notice and opportunity for hearing, order the action specified herein to be taken at any time after a funding deficiency has occurred but prior to expiration of the five-year period whenever, in~~

~~his discretion, such action is necessary to protect the interests of participants. The Secretary may by order revoke or modify any order previously made under this subsection, if, after notice and opportunity for hearing, he finds that the circumstances upon which the order was predicated do not exist.~~

~~(d) During any time that a pension plan is in suspended status pursuant to action taken under subsection (c), the Secretary, whenever he finds it necessary to protect the interests of participants, may, after notice and opportunity for hearing, require by order that the plan terminate and wind up its affairs in accordance with the provisions of title IV and procedures established by the Pension Benefit Insurance Corporation.~~

~~EFFECTIVE DATE~~

~~SEC. 305. The provisions of this title shall become effective two years after enactment of this Act.~~

That this Act may be cited as the "Employee Benefit Security Act".

FINDINGS AND DECLARATION OF POLICY

SEC. 2. (a) The Congress finds that the growth in size, scope, and numbers of employee benefit plans in recent years has been rapid and substantial; that the operational scope and economic impact of such plans is increasingly interstate; that the continued well-being and security of millions of

employees and their dependents are directly affected by these plans; that they are affected with a national public interest; that they have become an important factor affecting the stability of employment and the successful development of industrial relations; that they have become an important factor in commerce because of the interstate character of their activities, and of the activities of their participants, and the employers, employee organizations, and other entities by which they are established or maintained; that a large volume of the activities carried on by such plans are affected by means of the mails and instrumentalities of interstate commerce; that owing to the lack of employee information and adequate safeguards concerning their operation, it is desirable in the interests of employees and their beneficiaries, and to provide for the general welfare and the free flow of commerce, that disclosure be made and safeguards be provided with respect to the establishment, operation, and administration of such plans; that they substantially affect the revenues of the United States because they are afforded preferential Federal tax treatment; that despite the enormous growth in such plans many employees with long years of employment are losing anticipated retirement benefits owing to the lack of vesting provisions in such plans; that owing to the inadequacy of current minimum standards, the soundness and stability of plans with respect to adequate

funds to pay promised benefits may be endangered; that owing to the involuntary termination of plans before requisite funds have been accumulated, employees and their dependents have been deprived of anticipated benefits; and that it is therefore desirable in the interests of employees and their beneficiaries, for the protection of the revenue of the United States, and to provide for the free flow of commerce, that minimum standards be provided assuring the equitable character of such plans and their financial soundness.

(b) It is hereby declared to be the policy of this Act to protect interstate commerce and the interests of participants in employee benefit plans and their beneficiaries, by requiring the disclosure and reporting to participants and beneficiaries of financial and other information with respect thereto, by establishing standards of fiduciary conduct, responsibility, and obligation upon all persons who exercise any powers of control, management, or disposition with respect to employee benefit funds or have authority or responsibility to do so, or have authority or responsibility in the administration of employee benefit plans, and by providing for appropriate remedies, sanctions, and ready access to the Federal courts.

(c) It is hereby further declared to be the policy of this Act to protect interstate commerce, the Federal taxing

power, and the interests of participants in private pension plans and their beneficiaries by improving the equitable character and the soundness of such plans by requiring them to vest the accrued benefits of employees with significant periods of service, and to meet minimum standards of funding.

DEFINITIONS

SEC. 3. For purposes of this Act:

(1) The term "employee welfare benefit plan" means any plan, fund, or program which is communicated or its benefits described in writing to the employees, and which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, for the purpose of (A) providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment, or vacation benefits, apprenticeship or other training programs, or day care centers, scholarship funds, or prepaid legal services, or (B) in the case of a fund subject to the restrictions of section 302(c) of the Labor Management Relations Act, 1947, providing any other benefit which may be permitted by section 302(c)(5), 302(c)(6), or 302 (c)(7) of that Act.

(2) The term "employee pension benefit plan" or "pension plan" means any plan, fund, or program which is communicated or its benefits described in writing to the em-

ployees, and which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, if (A) such plan, fund, or program is established or maintained for the purpose of accumulating deferred income benefits for its participants or their beneficiaries, or (B) by its express terms or as a result of surrounding circumstances such plan, fund, or program results in a deferral of income by participants for periods, extending to the termination of participation or beyond, regardless of the method of calculating the contributions made to the plan, the method of calculating the benefits under the plan or the method of distributing benefits from the plan.

(3) The term "employee benefit plan" or "plan" means an employee welfare benefit plan or an employee pension benefit plan or a plan providing both welfare and pension benefits.

(4) The term "employee organization" means any labor union or any organization of any kind, or any agency or employee representation committee. association, group, or plan, in which employees participate and which exists for the purpose in whole or in part, of dealing with employers concerning an employee benefit plan, or other matters incidental to employment relationships; or any employees' beneficiary association organized for the purpose, in whole or in part, of establishing such a plan.

(5) The term "employer" means any person acting directly as an employer or indirectly in the interest of an employer in relation to an employee benefit plan, and includes a group or association of employers acting for an employer in such capacity.

(6) The term "employee" means any individual employed by an employer.

(7) The term "participant" means any employee or former employee of an employer or any member or former member of an employee organization who is or may become eligible to receive a benefit of any type from an employee benefit plan which covers employees of such employer or members of such organization, or whose beneficiaries may be eligible to receive any such benefit.

(8) The term "beneficiary" means a person designated by a participant or by the terms of an employee benefit plan who is or may become entitled to a benefit thereunder.

(9) The term "person" means an individual, partnership, corporation, mutual company, joint-stock company, trust, unincorporated organization, association, or employee organization.

(10) The term "State" includes any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, and the Canal Zone. The term "United States" when used in the

geographic sense means the States and the Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331–1343).

(11) The term "commerce" means trade, traffic, commerce, transportation, or communication between any State and any place outside thereof.

(12) The term "industry or activity affecting commerce" means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce and includes any activity or industry "affecting commerce" within the meaning of the Labor Management Relations Act, 1947, or the Railway Labor Act.

(13) The term "Secretary" means the Secretary of Labor.

(14) The term "party in interest" means any administrator, officer, trustee, custodian, counsel, or employee of any employee benefit plan, or a person providing benefit plan services to any such plan, or an employer any of whose employees are covered by such a plan or any person controlling, controlled by, or under common control with, such employer or officer or employee or agent of such employer or such person, or an employee organization having members covered by such plan, or an officer or employee or agent of such ar employee organization having members covered by

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such plan, or a relative or partner of, or joint venturer with, any of the above described persons.

(15) The term "relative" means a spouse, ancestor, child, grandchild, brother, sister, son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law.

(16) The term "administrator" means—

(A) the person specifically so designated by the terms of the plan, collective bargaining agreement, trust agreement, contract, or other instrument, under which the plan is operated; or

(B) in the absence of such designation, (i) the employer in the case of an employee benefit plan established or maintained by a single employer, (ii) the employee organization in the case of a plan established or maintained by an employee organization, or (iii) the association, committee, joint board of trustees, or other similar group of representatives of the parties who established or maintain the plan, in the case of a plan established or maintained by two or more employers or jointly by one or more employers and one or more employee organizations; and

(C) any person other than one named in subparagraph (A) or (B) of this paragraph who has the authority to amend the terms of the plan or the au-

thority to compel action under the terms of the plan on the part of any person named in subparagraph (A) or (B).

(17) The term "separate account" means an account established or maintained by an insurance company under which income, gains, and losses, whether or not realized, from assets allocated to such account, are, in accordance with the applicable contract, credited to or charged against such account without regard to other income, gains, or losses of the insurance company.

(18) The term "adequate consideration" when used in section 111 means (A) in the case of a security for which there is a generally recognized market, either (i) the price of the security prevailing on a national securities exchange which is registered with the Securities and Exchange Commission, or (ii) if the security is not traded on such a national securities exchange, a price not less favorable to the plan than the offering price for the security as established by the current bid and asked prices quoted by persons independent of the issuer and of any party in interest; and (B) in the case of an asset other than a security for which there is a generally recognized market, the fair market value of the asset as determined, in good faith by the trustee or administrator pursuant to the terms of the plan.

(19) The term "nonforfeitable" when used with respect

to a pension benefit or right means a legal claim obtained by a participant or his beneficiary to that part of an immediate or deferred pension benefit, which arises from the participant's service and is no longer contingent on continued service or any other obligation to the employer, sponsoring organization, or other party in interest.

(20) The term "security" has the same meaning as such term has under section 2(1) of the Securities Act of 1933 (15 U.S.C. 77b(1)).

(21) The term "fiduciary" means any person who exercises any power of control, management, or disposition or renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of an employee benefit plan, or has any authority or responsibility to do so, or who has any authority or responsibility in the administration of an employee benefit plan.

(22) The term "regular retirement benefit" means only that benefit payable under the plan at the regular retirement age in the event of service or age related retirement and excludes other benefits related to participant disability or plan termination.

(23) The term "accrued portion of the regular retirement benefit" means—

(A) In the case of a plan which provides for benefits based solely upon the amount contributed to the em-

ployee's account and any accumulated investment gains or losses, the amount credited to such account.

(B) In the case of a plan which provides for payment of a defined benefit in the form of a stated benefit unit attributed to each period of service, the benefit units credited to a participant or in the case of any plan wherein the benefit is expressed as a function of years of service the benefits credited to a participant; but in either case the highest unit rate of benefit credited for any year to any participant may not be greater than 133 per centum of the lowest unit rate of benefit credited to any other participant for that year, except to the extent that differences in unit benefit rates arise from varying rates of compensation.

(C) In the case of any other plan, including a plan wherein the benefit is expressed as a stated dollar amount or as a percentage of compensation for a stipulated period, notwithstanding any provision in the plan reducing a participant's benefit on account of failure to fulfill a minimum service requirement, that portion of the benefit (not exceeding 100 per centum of such benefit) as (i) the number of years of credited service under the plan, bears to (ii) the number of years of service which would have been credited had the participant continued in active service until reaching regular retirement age,

but (iii) the number of years calculated under clause (ii) of this subparagraph may not exceed thirty-five years, nor be less than fifteen years.

(D) For the purposes of this paragraph (23), the value of accrued regular retirement benefits shall be calculated—

(i) in the case of a pension plan as described in subparagraph (C) and providing regular retirement benefits based on compensation during a particular period, utilizing the assumption that the participant continued to earn annually until regular retirement age at the average rate of compensation for the period of covered service (prior to the participant's termination) equal in length to (but not greater than) the lesser of; the participant's actual covered service or ten years; and determined in the same manner as the period of covered service over which compensation would be averaged had the participant attained regular retirement age on the date of termination,

(ii) in the case of a plan described in subparagraph (B) or (C) of this paragraph wherein a participant's benefit is reduced on account of all or a portion of a participant's actual social security benefits, utilizing the assumption that the social security

benefit schedule in effect as of the valuation will remain unchanged until regular retirement age and such reduction shall not exceed that portion of such projected social security benefit as is represented by the ratio computed under subparagraphs (C)(i), (C)(ii), and (C)(iii) of this paragraph,

(iii) in the case of a plan described in subparagraph (B) or (C) of this paragraph providing benefits based on a fixed portion of compensation or on the portion of participant compensation in excess of the social security covered wage base, utilizing the assumption that such fixed portion of compensation or social security covered wage base remains unchanged until regular retirement age.

(E) For the purposes of paragraphs (22) and (23), in calculating the regular retirement benefit and the accrued portion of the regular retirement benefit, the plan may disregard any years of service of any participant to the extent such participant has received a lump-sum distribution in satisfaction of the present value of the benefits based on such years.

(24) The term "regular retirement age" means the earlier of, the first date at which a participant could elect to receive a benefit, unreduced on account of age and without

meeting any other requirement other than minimum service requirements, or age sixty-five.

(25) The term "vested liabilities" means the present value of the immediate or deferred benefits available at regular retirement age for participants and their beneficiaries which are nonforfeitable and which are no longer contingent on continued service or any other obligation to the employer, sponsoring organization or other party in interest.

(26) The term "current value" means fair market value where available and otherwise the fair value as determined in good faith by the trustee or administrator, assuming an orderly liquidation as of the statement date.

(27) The term "present value" with respect to an asset means either cost, adjusted for subsequent price fluctuations, or market value, adjusted to reflect anticipated events; and with respect to a liability, it means the value adjusted to reflect anticipated events. Such adjustments shall conform to such rules and regulations as the Secretary may provide.

(28) If any money or other property of an employee benefit plan are invested in shares of an investment company registered under the Investment Company Act of 1940, such investment shall not by itself cause such investment company or such investment company's investment adviser or principal underwriter to be deemed to be a "fiduciary" or a "party in interest" as those terms are defined in this

Act, without a further showing of discretionary responsibility for the plan's investment decisions, except insofar as such investment company or its investment adviser or principal underwriter acts in connection with an employee benefit plan covering employees of the investment company, the investment adviser, or its principal underwriter. Nothing contained in this paragraph shall limit the duties imposed on such investment company, investment adviser, or principal underwriter by any other law.

(29) The term "normal service cost" or "normal cost" means the annual cost of future pension benefits and administrative expenses assigned, under an actuarial cost method, to years subsequent to a particular valuation date of a pension plan.

(30) The term "present value of an annuity certain" as used in title III of this Act means the single sum required to pay $1 annually for "N" years, assuming interest is earned at the rate "i" per annum, which term may be expressed algebraically as follows:

$$1+\left(\frac{1}{1+i}\right)+\left(\frac{1}{1+i}\right)^{2}+\left(\frac{1}{1+i}\right)^{3}+\cdots+\left(\frac{1}{1+i}\right)^{N-1}.$$

(31) The term "accrued liability", under an actuarial cost method which so provides, means the excess of the present value, as of a particular valuation date of a pension plan, of the projected future benefit costs and administrative expenses for all plan participants and beneficiaries over the present

value of future contributions for the normal cost of all applicable plan participants and beneficiaries.

(32) The term "multiemployer plan" means a collectively bargained pension plan to which a significant number of affiliated employers are required to contribute and which covers a significant portion of the industry in terms of employees or a significant number of employees in the industry in a particular geographic area.

(33) The term "unfunded accrued liability" means the excess of the accrued liability, under an actuarial cost method which so provides, over the present value of the assets of a pension plan.

(34) The term "advance funding actuarial cost method" or "actuarial cost method" means a widely used and well recognized actuarial technique used by qualified actuaries for establishing the amount and incidence of the annual actuarial cost of pension plan benefits and expenses. Acceptable actuarial cost methods shall include the accrued benefit cost method (unit credit method), the entry age normal cost method, the individual level premium cost method, the aggregate cost method, the attained age normal cost method, and the frozen initial liability cost method. The terminal funding cost method and the current funding (pay-as-you-go) cost method are not acceptable actuarial cost methods. The Secretary shall issue regulations to further define acceptable actuarial cost methods.

TITLE I—FIDUCIARY RESPONSIBILITY AND DISCLOSURE

COVERAGE

SEC. 101. (a) Except as provided in subsection (b), this title shall apply to any employee benefit plan if it is established or maintained (1) by any employer engaged in commerce or in any industry or activity affecting commerce or (2) by any employee organization in which employees engaged in commerce or in any industry or activity affecting commerce participate or (3) by both.

(b) This title shall not apply to an employee benefit plan if—

(1) such plan is established or maintained by the Federal Government;

(2) such plan was established and is maintained solely for the purpose of complying with applicable workmen's compensation laws or unemployment compensation disability insurance laws; or

(3) such plan is established and maintained outside the United States primarily for the benefit of persons who are not citizens of the United States, or

(4) such plan is unfunded and is established or maintained by an employer primarily for the purpose of providing deferred compensation for a select group of management employees.

DUTY OF DISCLOSURE AND REPORTING

Sec. 102. (a) The administrator of an employee benefit plan shall cause to be published in accordance with section 105 to each participant or beneficiary covered thereunder (1) a description of the plan and (2) the information described in sections 105(b)(3) and 106(a). Such description and such report shall contain the information required by sections 103 and 104 of this title shall be published in accordance with section 105 and shall be in such form and detail as necessary to fully and fairly disclose all pertinent facts.

(b) The Secretary shall require the filing of special terminal reports on behalf of an employee benefit plan which is winding up its affairs. Such reports shall be required to be filed regardless of the number of participants remaining in the plan and shall be on such forms and filed in such manner as the Secretary may by regulation prescribe.

DESCRIPTION OF THE PLAN

Sec. 103. (a) A description of any employee benefit plan shall be published as required herein within one hundred and twenty days after the establishment of such plan or within one hundred and twenty days after such plan becomes subject to the title, whichever is later. Descriptions (reflecting all amendments to the plan) shall be republished as provided herein once every five years subsequent to initial publication.

(b) The description of the plan shall be comprehensive and shall be written in a manner calculated to be understood by the average plan participant and shall include the name and type of administration of the plan; the name and address of the administrator; names, titles, and addresses of any trustee or trustees (if they are persons different from the administrator); a description of any relevant collective bargaining agreement in which the plan is mentioned; the schedule of benefits; a description of the provisions providing for nonforfeitable pension benefits; the source of the financing of the plan and the identity of any organization through which benefits are provided; whether the records of the plan are kept on a calendar year basis, or on a policy or other fiscal year basis, and if on the latter basis, the date of the end of such policy or fiscal year; the procedures to be followed in presenting claims for benefits under the plan and the remedies available under the plan for the redress of claims which are denied in whole or in part. All amendments to the plan shall be included in the description on and after the effective date of such amendments.

ANNUAL REPORTS

SEC. 104. (a)(1) An annual report shall be published with respect to any employee benefit plan to which this title applies. Such report shall be published as required un-

der section 105, within two hundred and seventy days after the end of the calendar, policy, or fiscal year on which the records of the plan are kept (hereafter in this title referred to as "fiscal year of the plan").

(2) If some or all of the benefits under the plan are provided by an insurance carrier or other organization, such carrier or organization shall certify to the administrator of such plan, within one hundred and eighty days after the end of the fiscal year of the plan, such information necessary to enable such administrator to comply with the requirements of this Act.

(3)(A) Except as provided in subparagraph (B), the administrator of an employee benefit plan shall engage, on behalf of all plan participants, an independent qualified public accountant, who shall conduct such an examination of the financial statements of the plan as he may deem necessary to enable him to form an opinion as to whether the financial statements required to be included in the annual report by subsection (b) of this section are presented fairly in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year. Such examination shall be conducted in accordance with generally accepted auditing standards, and shall involve such tests of the books and records of the plan as are considered necessary by the independent qualified public accountant. The inde-

pendent qualified public accountant shall also submit a report as to whether the supplementary financial data specified in subsection (b) of this section presents fairly in all material respects the information contained therein when considered in conjunction with the financial statements taken as a whole. The opinion by the independent qualified public accountant shall be made a part of the annual report.

(B) The opinion required by subparagraph (A) need not be expressed as to any statements prepared by a bank or similar institution or insurance carrier as required by subparagraph (G) of paragraph (b)(3) of this section if such statements are certified by the bank, similar institution, or insurance carrier as accurate and are made a part of the annual report.

(C) For purposes of subparagraph (A) of this paragraph, section 105(a)(3), and section 114(a), the term "qualified public accountant" means—

(i) a person who is a certified public accountant, certified by a regulatory authority of a State,

(ii) a person who is a licensed public accountant, licensed on or before December 31, 1973, by a regulatory authority of a State, or

(iii) with respect to audits performed before January 1, 1976, any other person who meets, in the opinion of the Secretary, standards of education and

experience which are representative of the highest prescribed by the licensing authorities of the several States which provide for the continuing licensing of public accountants and which are prescribed by the Secretary in appropriate regulations;

except that if the Secretary deems it necessary in the public interest, he may prescribe by regulation higher standards than those required for the practice of public accountancy by the regulatory authorities of the States, and a person shall be considered a qualified public accountant for purposes of subparagraph (A), section 105(a)(3), and section 114(a) only if he meets such standards.

(4)(A) The administrator of an employee benefit plan subject to the reporting requirement of subsection (d) of this section shall engage, on behalf of all plan participants, a qualified actuary who shall supervise the computation of the "present value of accrued benefits" and "accrued benefits" required under paragraph (2) of subsection (b) of this section and shall supervise the preparation of the materials comprising the actuarial statement required under subsections (d) and (g) of this section.

(B) The qualified actuary shall utilize such assumptions and techniques as are necessary to enable him to form an opinion as to whether the contents of the matters reported under subsection (d) of this section:

(i) are reasonably related to the experience of the plan and to reasonable expectations; and

(ii) utilize assumptions which in combination, offer the single best estimate of anticipated experience under the plan.

The opinion by the qualified actuary shall be made a part of the annual report.

(C) For purposes of subparagraph (A) of this paragraph, section 105(a)(3), and section 114(a), the term "qualified actuary" means an actuary (i) who is a member of the American Academy of Actuaries or of any other organization which the Secretary determines requires the same or equivalent standards of its members, or (ii) who meets qualifications as the Secretary may establish by regulation.

(b) A report under this section shall include a financial statement containing the following information:

(1) With respect to an employee welfare benefit plan: a statement of assets and liabilities; a statement of revenues and expenses for the period aggregated by general source and application; a statement of changes in fund balance; a statement of changes in financial position; in the notes to financial statements disclosures concerning the following items shall be considered: a description of the plan including any significant changes in the plan made during the

period and the impact of such changes on benefits; a description of material lease commitments and contingent liabilities; a description of agreements and transactions with persons known to be parties in interest; a general description of priorities upon termination of the plan; information concerning whether or not a tax ruling or determination letter has been obtained; and any other matters necessary to fairly present the financial statements of a particular welfare benefit fund.

(2) With respect to an employee pension benefit plan: a statement of assets and liabilities including with respect to any employee benefit plan subject to the reporting requirements of subsection (d) of this section the estimated actuarially determined present value of accrued benefits to be paid under the plan as calculated by a qualified actuary and aggregated by the termination distribution categories enumerated in section 112; a statement of changes in net assets available for plan benefits which shall include details of revenues and expenses and other changes aggregated by general source and application; in the notes to financial statements disclosures concerning the following items shall be considered: a description of the plan including any significant changes in the plan made during the period; the funding policy (including policy with respect to prior service cost), and any changes in such policies during the year;

the most recent valuation date used to compute the present value of accrued benefits and the actuarial cost methods and assumptions; a description of any significant changes in plan benefits made during the period and the impact of such changes on the present value of accrued benefits; a description of material lease commitments, other commitments and contingent liabilities; agreements and transactions with persons known to be parties in interest; a general description of priorities upon termination of the plan; information concerning whether or not a tax ruling or determination letter has been obtained; and any other matters necessary to fully and fairly present the financial statements of a particular pension benefit fund.

(3) With respect to all employee benefit plans:

(A) a statement of the assets and liabilities of the fund aggregated by categories and valued at their current value, as well as the same data, displayed in comparative form for the end of the previous fiscal year of the plan;

(B) a statement of receipts and disbursements during the preceding twelve-month period aggregated by general sources and applications;

(C) a schedule of all assets held for investment purposes aggregated and identified by issuer, borrower, or lessor or similar party to the transaction, maturity

date, rate of interest, collateral, par or maturity value, cost, and current value;

(D) a schedule of each transaction involving a person known to be party in interest, the identity of such party in interest and his relationship to the plan, employer, employee, or other person, a description of each asset to which the transaction relates; the purchase or selling price in case of a sale or purchase, the rental in case of a lease, or the interest rate and maturity date in case of a loan; expenses incurred in connection with the transaction; the cost of the asset, the current value of the asset, and the net gain (or loss) on each transaction;

(E) a schedule of all loans made from the fund which were in default as of the close of the plan's fiscal year or were classified during the year as uncollectable and the following information with respect to each loan on such schedule: the original principal amount of the loan, the amount of principal and interest received during the reporting year, the unpaid balance, the identity and address of the obligor, a detailed description of the loan (including date of making and maturity, interest rate, the type and value of collateral, and other material terms), the amount of principal and interest overdue (if any) and an explanation thereof;

(F) a list of all leases which were in default or were

classified during the year as uncollectable; and the following information with respect to each lease on such schedule, the type of property leased (and, in the case of fixed assets such as land, buildings, leasehold, and so forth, the location of the property), the identity of the lessor or lessee from or to whom the plan is leasing, the relationship of such lessors and lessees, if any, to the plan, the employer, employee organization, or any other party in interest, the terms of the lease regarding rent, taxes, insurance, repairs, expenses, and renewal options; the date the leased property was purchased and its cost, the date the property was leased and its approximate value at such date, the gross rental receipts during the reporting period, expenses paid for the leased property during the reporting period, the net receipts from the lease, the amounts in arrears, and a statement as to what steps have been taken to collect amounts due or otherwise remedy the default; and

(G) if some or all of the assets of a plan or plans are held in a common or collective trust maintained by a bank or similar institution or in a separate account maintained by an insurance carrier or a separate trust maintained by a bank as trustee, the report shall include the most recent statement of assets and liabilities of such common or collective trust, and in the case of a separate

account or a separate trust, such other information as is required under paragraphs (1), (2), and (3) of this subsection. In such case the bank or similar institution or insurance carrier shall certify to the administrator of such plan or plans, within one hundred and eighty days after the end of each fiscal year of the plan the information necessary to enable the plan administrator to comply with the requirements of this title.

(c) The administrator shall furnish as a part of report under this section the following information: the average number of employees covered by the plan; the name and address of each fiduciary, the name of each person who received compensation from the fund during the preceding year for services rendered to the plan or its participants, the amount of such compensation, the nature of his services to the plan or its participants, his relationship to the employer of the employees covered by the plan, or the employee organization, and any other office, position, or employment he holds with any party in interest; and an explanation of the reason for any change in appointment of trustee, qualified public accountant, insurance carrier, actuary, administrator, or custodian.

(d) With respect to an employee pension benefit plan, and except in the case of a plan that is a profit sharing, savings, or other plan which provides an individual account

for each participant and where the benefits payable at or after retirement are based solely upon the amount contributed to the participant's account and any accumulated investment gains or losses thereon, or in the case of that portion of a plan in the form of benefits purchased from and guaranteed by an insurance company which is not controlled by, in control of or under common control with any employer, employee organization or other party in interest, a report under this section shall include an actuarial statement of valuation applicable to the reporting year which shall include a presentation of the liabilities, assets, contribution levels, the assumptions, and—

(1) the actuarial cost method and funding vehicle;

(2) the number of participants, both retired and nonretired covered by the plan;

(3) the current value of the plan assets and if different, the present value used in computing the contributions to the plan, and a statement explaining the basis of such asset valuation;

(4) the present value of all of the plan's liabilities for nonforfeitable pension benefits allocated by the termination priority categories as set forth in section 112; and the actuarial assumptions used in these computations; the Secretary shall establish regulations defining (for purposes of this section) "termination priority categories"

and acceptable methods, including approximate methods, for allocating the plan's liabilities to such termination priority categories;

(5) the ratio of (A) the current value of the assets (as set forth in (3)) allocated to each termination priority category as set forth in section 112 to (B) the liabilities (as set forth in (4)) allocated to each such termination priority category;

(6) a statement of the amount, if any, by which the assets of the plan either exceed or fall below the amount of assets required in order for the plan to meet the funding requirements of section 302; and

(7) such other information as may be necessary to fully and fairly disclose the actuarial position of the fund.

(e) If some or all of the benefits under the plan are purchased from and guaranteed by an insurance company, a report under this section shall include a statement from such insurance company covering the fiscal year and enumerating—

(1) total premiums received from the plan;

(2) the amount paid in the form of benefits;

(3) the amount charged on account of administrative expense;

(4) the amount of any commissions or any other

acquisition costs paid by the insurance company and to whom paid; and

(5) the amount held to pay future benefits.

(f) If the only assets from which claims against an employee benefit plan may be paid are the general assets of the employer or the employee organization, the report shall include (for each of the past five years) the benefits paid and the average number of employees eligible for participation.

(g) In the event of termination of any employee pension benefit plan the annual report of such plan for the year shall include any supplementary information required to be filed with the Secretary by subsection 102(b) and in the case of such a plan required to file an actuarial statement of valuation as described in subsection (d) of this section such report shall also include a statement of the plan's actuarial gain or loss for all years subsequent to the effective date of this title. Such statement shall be in the form of an actuarial valuation substituting the experience of the plan and its participants for the assumptions normally utilized.

PUBLICATION

SEC. 105. (a)(1) The administrator of any employee benefit plan subject to this title shall file with the Secretary a copy of the plan description and each annual report. The Secretary shall make copies of such descriptions and annual

reports available for inspection in the public document room of the Department of Labor. The Secretary—

(A) shall exempt from the annual filing requirement of this paragraph any employee benefit plan with fewer than twenty-six participants, and

(B) may exempt from such filing requirement any other class or type of employee benefit plan with fewer than one hundred participants, if the Secretary finds that the application of such requirement to such other plans is not required to implement the purposes of this Act.

(2) The Secretary may reject any filing under this section.

(A) after notice, hearing, and a determination on the record by the Secretary that such filing is incomplete for purposes of this title; or

(B) if he finds, after notice and opportunity for presentation of views, that there is any material qualification by an accountant or actuary contained in an opinion submitted pursuant to section 104(a)(3)(A) or section 104(a)(4)(B).

(3) If the Secretary rejects a filing of a report under paragraph (2), if a revised report satisfactory to the Secretary is not submitted within forty-five days after the Secretary makes his determination under paragraph (2) to reject the

filing, and if the Secretary deems it in the best interest of the participants, he may—

(A) retain an independent qualified public accountant (as defined in section 104(a)(3)(C)) on behalf of the participants to perform an audit,

(B) retain a qualified actuary (as defined in section 104(a)(4)(C) of this title) to make an actuarial report, or

(C) bring a civil action for such legal or equitable relief as may be appropriate to account for or safeguard the assets of the plan.

The administrator shall permit such accountant, auditor, or actuary to inspect whatever books and records of the plan are necessary for such audit. The plan shall be liable to the Secretary for the expenses for such audit or report; and the Secretary may bring an action against the plan in any court of competent jurisdiction to recover such expenses.

(b) Publication of the plan descriptions and annual reports required by this title shall be made to participants and beneficiaries of the particular plan as follows:

(1) The administrator shall furnish to each plan participant or his beneficiaries a copy of the plan description (including all amendments or modifications thereto). Such description shall be furnished—

(A) to a plan participant within thirty days after he commences covered employment, and

(B) to all plan participants at least once every five years, except that, if there is any material modification in the terms of the plan, such description shall be furnished not later than one year after the change takes effect.

(2) The administrator shall make copies of the latest annual report and the bargaining agreement, trust agreement, contract, or other instrument under which the plan was established and is operated available for examination by any plan participant or beneficiary in the principal office of the administrator and in such other places as may be necessary to fully and fairly disclose all pertinent facts to all participants.

(3) Within two hundred and seventy days after the close of the fiscal year of the plan, the administrator shall furnish to each participant, or his beneficiaries, a copy of the statements and schedules for that fiscal year described in subparagraphs (A) and (B) of paragraph 104(b)(3) and paragraphs (5) and (6) of subsection 104(d), section 104, and such other material as is necessary to fairly summarize the latest annual report.

(4) The administrator shall, upon written request of any participant or beneficiary, furnish a com-

plete copy of the latest annual report, the bargaining agreement, trust agreement, contract, or other instruments under which the plan is established and operated. The administrator may make a reasonable charge to cover the cost of furnishing such complete copies.

DISCLOSURE OF BENEFIT RIGHTS TO PARTICIPANTS

SEC. 106. (a) The administrator of an employee pension benefit plan shall so inform each participant when his benefits have become nonforfeitable under the plan and upon written request of any participant or beneficiary, furnish a statement indicating (1) whether or not such person has a nonforfeitable right to receive a benefit or the earliest date on which benefits will become nonforfeitable, (2) the amount of the benefits, if any, which have become nonforfeitable or an estimate of the amount of benefits which will have accrued at such date, and (3) the number of the priority under which such benefits would be distributed under section 112 in the event of termination of the plan.

(b)(1) Upon the termination of service under the plan of a participant having a right to a nonforfeitable pension benefit payable at a later date, the plan administrator shall—

(A) furnish to the participant or his surviving beneficiary a statement setting forth his rights and privileges under the plan. The statement shall be in such form, be furnished and filed in such manner, and shall contain

such information, including but not limited to the nature and amount of benefits to which he is entitled, the name and address of the entity responsible for payment, the date when payment shall begin and the procedure for filing his claim, as the Secretary may by regulation prescribe; and

(B) report to the Secretary of Health, Education, and Welfare such information as the Secretary of Health, Education, and Welfare may prescribe by regulation to facilitate notification under paragraph (2) to such participant or his beneficiaries of their nonforfeitable pension benefits under such plan.

(2) If information has been reported under paragraph (1)(B) with respect to the pension benefits under a pension plan of a participant or his beneficiaries then whenever such participant applies for benefits under title II of the Social Security Act, or a beneficiary (under such plan) of such participant applies for benefits under such title on the basis of such participant's wages and self-employment income, the Secretary of Health, Education, and Welfare shall include the information in such report in his response to such application. The Secretary of Labor shall reimburse the Secretary of Health, Education, and Welfare for use by the latter of personnel and facilities in the performance of his functions under this subsection.

REPORTS MADE PUBLIC INFORMATION

SEC. 107. The contents of the descriptions and reports filed with the Secretary pursuant to this title shall be public information, and the Secretary shall make any such information and data available for inspection in the public document room of the Department of Labor. The Secretary may use the information and data for statistical and research purposes, and compile and publish such studies, analyses, reports, and surveys based thereon as he may deem appropriate.

RETENTION OF RECORDS

SEC. 108. Every person subject to a requirement to file any description or report or to certify any information therefor under this Act or who would be subject to such a requirement but for an exemption granted under section 105 of this Act shall maintain records on the matters of which disclosure is required which will provide in sufficient detail the necessary basic information and data from which the documents thus required may be verified, explained, or clarified, and checked for accuracy and completeness, and shall include vouchers, worksheets, receipts, and applicable resolutions, and shall keep such records available for examination for a period of not less than six years after the filing of the documents based on the information which they con-

tain, notwithstanding the waiver of such requirement by the Secretary under subsection (a) of section 105.

RELIANCE ON ADMINISTRATIVE INTERPRETATIONS

Sec. 109. In any criminal action or proceeding under section 403 based on any act or omission in alleged violation of sections 102 through 110 of this Act, no person shall be subject to any liability or punishment for or on account of the failure of such person to (1) comply with sections 102 through 110 of this title if he pleads and proves that the act or omission complained of was in good faith, in conformity with, and in reliance on any regulation or written ruling of the Secretary, or (2) publish and file any information required by any provision of this title if he pleads and proves that he published and filed such information in good faith, and in conformity with any regulation or written ruling of the Secretary issued under this title regarding the filing of such reports. Such a defense, if established, shall be a bar to the action or proceeding, notwithstanding that (A) after such act or omission, such interpretation or opinion is modified or rescinded or is determined by judicial authority to be invalid or of no legal effect, or (B) after publishing or filing the description and annual reports, such publication or filing is determined by judicial authority not to be in conformity with the requirements of this title.

BONDING

SEC. 110. (a) Every fiduciary of an employee benefit plan and every person who handles funds or other property of such a plan shall be bonded as provided in this section; except that, where such plan is one under which the only assets from which benefits are paid are the general assets of a union or of an employer, the administrator, officers, and employees of such plan shall be exempt from the bonding requirements of this section. The amount of such bond shall be fixed at the beginning of each fiscal year of the plan. Such amount shall be not less than 10 per centum of the amount of funds handled, determined as provided in this section, except that any such bond shall be in at least the amount of $1,000 and no such bond shall be required in an amount in excess of $500,000; except that the Secretary, after due notice and opportunity for hearing to all interested parties, and after consideration of the record, may prescribe an amount in excess of $500,000, which in no event shall exceed 10 per centum of the funds handled. For purposes of fixing the amount of such bond, the amount of funds handled shall be determined by the funds handled by the person, group, or class to be covered by such bond and by their predecessor or predecessors, if any, during the preceding reporting year, or if the plan has no preceding reporting year, the amount of

funds to be handled during the current reporting year by such person, group, or class, estimated as provided in regulations of the Secretary. Such bond shall provide protection to the plan against loss by reason of acts of fraud or dishonesty on the part of such administrator, officer, or employee, directly or through connivance with others. Any bond shall have as surety thereon a corporate surety company which is an acceptable surety on Federal bonds under authority granted by the Secretary of the Treasury pursuant to the Act of July 30, 1947 (6 U.S.C. 6–13). Any bond shall be in a form or of a type approved by the Secretary, including individual bonds or schedule or blanket forms of bonds which cover a group or class.

(b) It shall be unlawful for any administrator, officer, or employee to whom subsection (a) applies, to receive, handle, disburse, or otherwise exercise custody or control of any of the funds or other property of any employee benefit plan, without being bonded as required by subsection (a) and it shall be unlawful for any administrator, officer, or employee of such plan, or any other person having authority to direct the performance of such functions, to permit such functions, or any of them, to be performed by any such person, with respect to whom the requirements of subsection (a) have not been met.

(c) It shall be unlawful for any person to procure

any bond required by subsection (a) from any surety or other company or through any agent or broker in whose business operations such plan or any party in interest in such plan has any control or significant financial interest, direct or indirect.

(d) Nothing in any other provision of law shall require any person, required to be bonded as provided in subsection (a) because he handles funds or other property of an employee benefit plan, to be bonded insofar as the handling by such person of the funds or other property of such plan is concerned.

(e) The Secretary shall from time to time issue such regulations as may be necessary to carry out the provisions of this section. When, in the opinion of the Secretary, the administrator of a plan offers adequate evidence of the financial responsibility of the plan, or that other bonding requirements would provide adequate protection of the beneficiaries and participants, he may exempt such plan from the requirements of this section.

FIDUCIARY RESPONSIBILITY

SEC. 111. (a)(1) Every employee benefit plan shall be established pursuant to a written plan, which shall identify and appoint an administrator or administrators who shall upon acceptance of their position have full authority for the operation of such employee benefit plan including the au-

thority to themselves amend such plan where such an amendment is necessary to meet the requirements of this Act or where such amendment is necessary to protect the interests of the participants. The assets of such plan shall be held in trust for the participants and their beneficiaries, and except as provided in section 112 or in paragraph (2) of this subsection, the assets of such a plan shall never inure to the benefit of any employer and shall be held for the exclusive purposes of (A) providing benefits to participants in the plan and their beneficiaries and (B) defraying reasonable expenses of administering the plan. Nothing in this paragraph shall be construed to prevent any individual or group of individuals from serving as both a trustee and administraior for any plan.

(2) A contribution—

(A) which is made by an employer as a mistake of fact, or

(B) which is conditioned upon approval by the Secretary of the Treasury or his delegate of the deduction of the contribution under section 401 of the Internal Revenue Code of 1954, in a case in which the deduction is not approved,

may be returned to the employer within one year after the payment of the contribution.

(3) Any person who is an administrator with respect

to a plan shall exercise this authority solely in the interest of the participants and beneficiaries and shall exercise due diligence to operate the plan in conformity with the requirements of this Act.

(b)(1) A fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and—

(A) for the exclusive purpose of:

(i) providing benefits to participants and their beneficiaries; and

(ii) defraying reasonable expenses of administering the plan;

(B) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims;

(C) by diversifying the investments so as to minimize the risk of large losses unless under the circumstances it is prudent not to do so; except that the requirement of diversification in this subparagraph shall not apply to profit-sharing, stock bonus, or thrift and savings plans providing benefits at or after retirement which explicitly provide that some or all of the plan funds may be invested in securities of such employer, or a corpora-

tion controlling, controlled by, or under common control with, such employer. Profit-sharing, stock bonus, or thrift and savings plans, which are in existence on the date of enactment and which invest in such securities without explicit provision in the plan, shall remain exempt from the diversification rule of this subparagraph until the expiration of one year from the effective date of this title; and

(D) in accordance with the documents and instruments governing the plan insofar as is consistent with this Act.

(2) Except as permitted under subsection (a)(1) of this section, a fiduciary with respect to a plan shall not—

(A) deal with the assets of the plan for his own account,

(B) in his individual or any other capacity act in any transaction involving the plan on behalf of a party whose interests are adverse to the interests of the plan or the interest of its participants or beneficiaries,

(C) receive any consideration for his own personal account from any party dealing with such plan in connection with a transaction involving the assets of the plan,

(D) permit the transfer of any property of the plan to or its use by any person known to be a party in

interest, except in return for no less than adequate consideration, or

(E) permit the acquisition of any property from or services by any person known to be a party in interest, except in exchange for no more than adequate consideration.

(c) Nothing in this section shall be construed to prohibit any fiduciary from—

(1) receiving any benefit to which he may be entitled as a participant or beneficiary in the plan under which the fund was established, so long as the benefit is computed and paid on a basis which is consistent with the terms of the plan as applied to all other participants;

(2) receiving any reasonable compensation for services rendered, or for the reimbursement of expenses properly and actually incurred, in the performance of his duties with the fund; except that no person so serving who already receives full-time pay from an employer or an association of employers, whose employees are participants in the plan under which the fund was established, or from an employee organization whose members are participants in such plan shall receive compensation from such fund, except for reimbursement of expenses properly and actually incurred and not otherwise reimbursed; or

(3) serving as a fiduciary in addition to being an officer, employee, agent, or other representative of a party in interest.

(d) Any person who is a fiduciary or administrator with respect to a plan who breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries or administrators by this title shall be personally liable to make good to such plan any losses to the fund resulting from each breach, and to restore to such plan any profits of such fiduciary or administrator which have been made through use of assets of the fund by the fiduciary or administrator and shall be subject to such other equitable or remedial relief as the court may deem appropriate, including removal of such fiduciary or administrator. A fiduciary or administrator may also be removed for a violation of section 112 of this title.

(e)(1) The management and control of the assets of an employee benefit plan subject to this title shall be vested in one or more trustees, who shall hold legal title to the assets of the plan, in trust for the exclusive benefit of the participants in the plan. Such trustee or trustees, upon acceptance of their appointment, shall have exclusive authority, discretion, and control to manage the assets of the trust. When the assets of a plan are held by two or more trustees—

(A) each shall use reasonable care to prevent a co-

trustee from committing a breach, notwithstanding language to the contrary in the trust agreement; and

(B) they shall jointly manage and control the trust, except that nothing in this subparagraph (B) shall preclude any agreement authorized by the trust instrument allocating specific responsibilities, obligations, or duties among trustees, in which event such a trustee to whom certain responsibilities, obligations, or duties have not been allocated shall not be liable under this subparagraph either individually or as a trustee for any loss resulting to the fund arising from the acts or omissions to act on the part of another trustee to whom such responsibilities, obligations, or duties have been allocated, unless the trustee to whom the responsibilities, obligations, or duties were not allocated participated knowingly in the activities constituting a breach of the specific responsibilities, obligations, or duties allocated to any other trustee.

(f) No fiduciary shall be liable with respect to a breach of fiduciary duty under this section if such breach was committed before he became a fiduciary or after he ceased to be a fiduciary.

(g) Except as provided in subsection (e)(1)(B) of this section, any provision in an agreement or instrument which purports to relieve a fiduciary from responsibility or

liability for any responsibility, obligation, or duty under this title shall be void as against public policy.

(h) No action may be commenced under subsection (d) with respect to a fiduciary's breach of any responsibility, duty, or obligation, or with respect to a violation of section 112, after the earlier of—

(1) six years after the date of the breach or violation, or

(2) three years after the earliest date (A) on which the plaintiff had actual knowledge of the breach or violation, or (B) on which a report from which he could reasonably be expected to have obtained knowledge of such breach or violation was filed with the Secretary under this title.

(i) Every employee pension benefit plan subject to this title, which provides for the payment of benefits in the form of an annuity for the life of the participant, shall provide, at the option of the participant, for the payment of such benefit in the form of an annuity for the combined lives of the participant and such participant's spouse. Nothing herein shall preclude the payment of such optional benefit on a reduced basis, so long as such reduction does not exceed the actuarial cost associated with the life expectancy of the participant's spouse. Such option shall be made available to each participant during the two years preceding regular retirement age

or the participant's first receipt of regular retirement benefits, whichever is earlier.

PLAN TERMINATION

SEC. 112. (a) Subject to the authority of the Secretary to provide exemptions or variances under section 401 of this Act, upon the complete or partial termination (subject to subsection (h)) of an employee pension benefit plan, the net assets of the plan shall be distributed as provided in this section.

(b) Subject to subsection (c) the net assets of the plan shall be applied in accordance with the following priorities:

(1) First, to refund to each participant in the plan the amount of contributions made by him less any benefits received before termination;

(2) Second, to pay to each participant (or his beneficiaries) in the plan who (A) has been receiving benefits under the plan or (B) on the date of such termination, has reached the earliest age on which he could, under the terms of the plan, elect to receive retirement benefits (other than on account of disability) under the plan, the present value of his nonforfeitable benefits, reduced (but not below zero) by the amount of contributions distributed under paragraph (1).

(3) Third, to pay to each participant in the plan (other than a participant described in paragraph (2))

who had acquired rights to nonforfeitable benefits under the plan prior to termination of the plan, the present value of such benefits less any amount paid under paragraph (1); and

(4) Fourth, to pay to any other participant in the plan not described in paragraph (2), or (3), whose benefits have not become nonforfeitable under the terms of the plan, the present value of such benefits less any amount paid under paragraph (1).

(c) If the assets of a plan are insufficient to meet all the liabilities for the participants described in paragraphs (1), (2), or (3) of subsection (b), and the liabilities of the plan have been increased within the preceding five years by reason of a plan amendment affecting the benefit schedule, the net assets shall be distributed as provided in subsection (b) except that the following additional rules shall apply:

(1) In applying subsection (b) the present value of accrued or nonforfeitable benefits shall be computed on the basis of the most recent benefit schedule in effect at any time during the five years preceding termination of the plan which results in the calculation of the liability for the accrued portion of the regular retirement benefit for all participants described in subparagraphs (1) through (3) of subsection (b) which most nearly equals the net assets of the plan at termination. If the assets ex-

ceeded the amount required to meet these liabilities the excess shall be shared in proportion to years of service as follows:

(A) First, to those described in subparagraph (2) of subsection (b), but in no event shall the amount distributed to any individual exceed the amount which would be allocated to him under subsection (b) (without regard to this subsection); and

(B) Second, to those described in (3) and (4) of subsection (b), but in no event shall the amount distributed to any individual exceed the amount allocated to him under subsection (b) (without regard to this subsection).

(d) For the purpose of subsections (b) and (c) of this section:

(1) The term "any other participant" as used in subsection (b)(4) shall include (A) any person who is a participant at termination and (B) any former participant whose participation was ended within the five years preceding termination of the plan, because of any event or circumstance substantially beyond his control.

(2) A beneficiary of any participant who made contributions, or who has nonforfeitable pension benefits under the terms of the plan, shall be treated as a participant in the event of termination of the plan.

(e) Upon the termination of an employee welfare benefit plan, the net assets of the plan shall be distributed as provided under the terms of the plan.

(f) The term "net assets" as used in this section means the assets of a plan less reasonable administrative expenses of termination.

(g) In the event of termination of any employee benefit plan, whether under the expressed terms of the plan or otherwise, the assets of the plan shall be held for the exclusive purposes of (1) providing benefits to participants in the plan and their beneficiaries and (2) defraying reasonable expenses of administering the plan, except as otherwise provided in section (a)(2) of this section. Any assets remaining after the satisfaction of the liabilities described in subsection (b) which are attributable (under regulations of the Secretary) to accumulated investment earnings on employee contributions shall be ratably distributed to the employee contributors according to their rate of contribution.

(h) Any assets remaining after satisfaction of liabilities described in subsections (b) and (g) of this subsection shall be used to satisfy any such liabilities (other than those described in subsections (b) and (g)) as the plan may set forth as being payable only if the plan terminates.

(i) Any assets remaining after the satisfaction of all the liabilities described in subsections (b), (g), and (h) of this

subsection may, upon application to the Secretary and after notice, hearing, and a finding that the purpose of this subsection has been complied with, be distributed as provided in the plan. If the plan has no provision for such distribution, such assets shall be distributed pro rata to each person otherwise receiving a distribution under this section.

(j) The Secretary shall issue regulations to define acceptable methods for paying to each participant the value of his account, as determined under the priority distribution of assets in this section. Such methods shall provide (to the extent feasible) for the payment of the value of the participant's account as a monthly pension.

(k) Any plan which provides that participants may elect to have retirement benefits paid in the form of one of several types of annuities and which terminates under this section shall permit all participants who have terminated service under the plan to make such an election.

(l)(1) In the event of a complete or partial termination of a plan, the plan shall file a special report on such forms and in such manner as the Secretary may prescribe to carry out the purposes of this section.

(2)(A) A plan shall file a report (as required in paragraph (1)) and the Secretary shall make a determination as to whether or not a partial termination has occurred whenever the present value of the accrued portion of the regular re-

tirement benefits, whether forfeitable or nonforfeitable, for the group of employees excluded from coverage (for any reason) in any two consecutive fiscal years of the plan equals or exceeds 25 per centum of the present value of the accrued portion of the regular retirement benefits for all plan participants in such period.

(B) In the event the Secretary determines a partial termination has occurred, the net assets shall be distributed to the participants and beneficiaries giving rise to the partial termination in accordance with subsections (b) through (g) of this section under the assumption that a complete termination had occurred.

(3) The term "partial plan termination" for purposes of this section shall be defined by the Secretary by regulation. Such regulations shall provide that whether or not a partial termination of a pension plan occurs when a group of participants who have been covered by the plan is subsequently excluded from such coverage either by reason of an amendment to the plan, or because of any event or circumstance substantially beyond their control, shall be determined on the basis of all the facts and circumstances; and whether or not a partial termination occurs when benefits or employer contributions are reduced, or the eligibility or vesting requirements under the plan are made less liberal, shall be determined on the basis of all the facts and circumstances.

PROHIBITION AGAINST CERTAIN PERSONS HOLDING OFFICE

SEC. 113. (a) No person who has been convicted of, or has been imprisoned as a result of his conviction of, robbery, bribery, extortion, embezzlement, fraud, grand larceny, any crime described in section 9(a)(1) of the Investment Company Act of 1940 (15 U.S.C. 80a–9(a)(1)), or a violation of any provision of this Act, or a violation of section 302 of the Labor Management Relations Act, 1947 (29 U.S.C. 186), or a violation of chapter 63 of title 18, United States Code, or a violation of section 874, 1027, 1503, 1505, 1506, 1510, 1951, or 1954 of title 18, United States Code, or a violation of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. 401), or conspiracy to commit any such crimes or attempt to commit any such crimes, or a crime in which any of the foregoing crimes is an element, shall serve or be permitted to serve—

(1) as an administrator, officer, trustee, custodian, counsel, agent, or employee of any employee welfare or pension benefit plan, or

(2) as a consultant to any employee welfare or pension benefit plan,

during or for five years after such conviction or after the end of such imprisonment, whichever is the later, unless prior to the end of such five-year period, in the case of a

person so convicted or imprisoned, (A) his citizenship rights, having been revoked as a result of such conviction, have been fully restored, or (B) the Board of Parole of the United States Department of Justice determines that such person's service in any capacity referred to in clause (1) or (2) would not be contrary to the purposes of this Act. Prior to making any such determination the Board shall hold an administrative hearing and shall give notice of such proceeding by certified mail to the State, county, and Federal prosecuting officials in the jurisdiction or jurisdictions in which such person was convicted. The Board's determination in any such proceeding shall be final. No person shall knowingly permit any other person to serve in any capacity referred to in clause (1) or (2) in violation of this subsection. Notwithstanding the preceding provisions of this subsection, no corporation or partnership will be precluded from acting as an administrator, trustee, custodian, counsel, agent, or employee of any employee benefit plan or as a consultant to any employee, welfare, or pension benefit plan without a notice, hearing, and determination by the Secretary that such service would be inconsistent with the intention of this section.

(b) Any person who intentionally violates this section shall be fined not more than $10,000 or imprisoned for not more than one year, or both.

(c) For the purposes of this section:

(1) A person shall be deemed to have been "convicted" and under the disability of "conviction" from the date of the judgment of the trial court or the date of the final sustaining of such judgment on appeal, whichever is the later event; and

(2) The term "consultant" means any person who, for compensation, advises ,or represents an employee benefit plan or who provides other assistance to such plan, concerning the establishment of operation of such plan.

(d) This section shall not apply to a conviction for a crime committed before the date of enactment of this Act.

ADVISORY COUNCIL

SEC. 114. (a) There is hereby established an Advisory Council on Employee Welfare and Pension Benefit Plans (hereinafter referred to as the "Council") which shall consist of fifteen members to be appointed in the following manner: One from the insurance field, one from the corporate trust field, one qualified public accountant (as defined in section 104(a)(3)(C) of this title), one actuary qualified to offer the opinion required under section 104a(4)(C) of this title, three from management, three from labor, and one from the multiemployer benefit plan field, all appointed by the Secretary from among persons recommended by orga-

nizations in the respective groups; and four representatives of the general public appointed by the Secretary.

(b) It shall be the duty of the Council to advise the Secretary with respect to the carrying out of his functions under this title, and to submit to the Secretary recommendations with respect thereto. The Council shall meet at least twice each year and at such other times as the Secretary requests. At the beginning of each regular session of the Congress, the Secretary shall transmit to the Senate and House of Representatives each recommendation which he has received from the Council during the preceding calendar year and a report covering his activities under the title for the preceding fiscal year, including full information as to the number of plans and their size, the results of any studies he may have made of such plans and the title's operation and such other information and data as he may deem desirable in connection with employee welfare and pension benefit plans.

(c) The Secretary shall furnish to the Council an executive secretary and such secretarial, clerical, and other services as are deemed necessary to the conduct of its business. The Secretary may call upon other agencies of the Government for statistical data, reports, and other information which will assist the Council in the performance of its duties.

(d)(1) Members of the Council shall each be entitled to receive the daily equivalent of the annual rate of basic pay

in effect for grade GS–18 of the General Schedule for each day (including traveltime) during which they are engaged in the actual performance of duties vested in the Council.

(2) While away from their homes or regular places of business in the performance of services for the Council, members of the Council shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5 of the United States Code.

(e) Section 14(a) of the Federal Advisory Committee Act (relating to termination) shall not apply to the Council.

REPEAL AND EFFECTIVE DATE

SEC. 115. (a) The Welfare and Pension Plans Disclosure Act is repealed; except that such Act shall continue to apply to any conduct which occurred before the effective date of this Act.

(b) Except as provided in subsection (c), this Act (including the repeal made by subsection (a)) shall take effect six months after the date of enactment of this Act.

(c) The provisions of this Act authorizing the Secretary to promulgate regulations shall take effect on the date of this Act.

(d) In order to provide for an orderly disposition of any investments held on the date of enactment of this Act,

the retention of which would be prohibited by section 111(b)(1)(C), and in order to protect the interest of the fund and its participants and its beneficiaries, a fiduciary may in his discretion effect the disposition of such investment within three years after the date of enactment of this Act or within such additional time as the Secretary may by rule or regulation allow, and such action shall be deemed to be in compliance with section 111(b)(1)(C).

TITLE II—VESTING

COVERAGE

SEC. 201. (a) Except as provided in subsection (b) this title shall apply to any employee pension benefit plan—

(1) if it is established or maintained by an employer engaged in commerce or in any industry or activity affecting commerce or by such employer together with any employee organization representing employees engaged in commerce or in any industry or activity affecting commerce; or

(2) if such plan is established or maintained by any employer or by any employer together with any employee organization and if, in the course of its activities, such plan, directly or indirectly, uses any means or instruments of transportation or communication in interstate commerce or the mails.

(b) This title shall not apply to any employee pension benefit plan if—

(1) such plan is established or maintained by the Federal Government or by the government of a State or by a political subdivision of a State, or by any agency or instrumentality of any of the above;

(2) such plan is established and maintained outside the United States primarily for the benefit of persons who are not citizens of the United States; or

(3) such plan provides contributions or benefits exclusively for a sole proprietor or, in the case of a partnership, exclusively for one or more partners each of whom owns more than 10 per centum of either the capital interest or the profits interest in such partnership;

(4) if each participant in such plan is also a participant in a primary retirement plan as described in subparagraph 111(b)(3)(D) of title I of this Act and such plan provides for class year vesting wherein the contributions become nonforfeitable within five years of the date made;

(5) such plan is unfunded and is established or maintained by an employer primarily for the purpose of providing deferred compensation for a select group of management employees.

ELIGIBILITY REQUIREMENTS

SEC. 202. (a) Except as provided in subsection (b), no pension plan subject to this title shall require as a condition for eligibility to participate in such plan, and to accrue benefits thereunder, a period of employment longer than one year or attainment of an age greater than age twenty-five, whichever occurs later;

(b)(1) In the case of any plan which either provides for immediate vesting of 100 per centum of the accrued portion of the regular retirement benefit of participants or provides for crediting for benefit purposes all service rendered by a plan participant prior to plan participation, such plan may require as a condition for eligibility to participate in the plan, a period of employment no longer than three years or attainment of an age greater than twenty-five, whichever occurs later.

(2) A plan may exclude from participation in the plan any person whose employment commences at an age which is greater than the regular retirement age under the plan reduced by five years.

NONFORFEITABLE BENEFITS

SEC. 203. (a) Every pension plan subject to this title shall provide rights to participants to receive nonforfeitable pension benefits as follows:

(1) Every plan created before the enactment of this

Act shall provide that participants are entitled to nonforfeitable benefits in accordance with one of the following alternatives:

(A) After a specified period of service not exceeding ten years, a participant shall be entitled to nonforfeitable benefits equal to not less than 50 per centum of the entire accrued portion of the regular retirement benefit, which percentage shall increase at a rate equivalent to 10 percentage points for each full year of service under the plan after this title first applies to the plan, so that the percentage will reach 100 per centum no more than five years after such date.

(B) A participant shall be entitled to nonforfeitable benefits equal to the entire accrued portion of the regular retirement benefit at the expiration of a period of service of twenty years (or any lesser period of service specified in the plan on the date of enactment of this Act), which period shall be reduced to a ten-year period at an annual rate determined under the following table:

If the number of years after the date this title first applies to the plan is—	And if the total number of years plan was in existence prior to the date this title first applies to such plan is— 1	2	3	4	5	6	7	8	9	10 or more
	Then the period shall be reduced at an annual rate of—									
1	2	2	2	2	2	2	2	2	2	2
2	1	1	2	2	2	2	2	2	2	2
3	1	1	1	1	2	2	2	2	2	2
4	1	1	1	1	1	1	2	2	2	2
5	1	1	1	1	1	1	1	1	2	2
6	1	1	1	1	1	1	1	1		
7	1	1	1	1	1	1				
8	1	1	1	1						
9	1	1								
10 or more										

(C) A participant shall be entitled to nonforfeitable benefits equal to 30 per centum of the entire accrued portion of the regular retirement benefit after a specified period of service not exceeding eight years, which per centum shall increase by at least 10 per centum for each year of service following the eighth year so that upon completion of fifteen years of service the participant shall be entitled to a nonforfeitable benefit equal to 100 per centum of the entire accrued portion of the regular retirement benefit.

(D) A participant shall be entitled to nonforfeitable benefits equal to at least 50 per centum of the entire accrued portion of the regular retirement benefit at the first time after a specified period of service not exceeding five years, at which the sum of his age and years of service equals or exceeds forty-five, which entitlement shall increase by at least 10 per centum for each succeeding year of service so that within five years thereafter the participant shall be entitled to a nonforfeitable benefit equal to 100 per centum of the entire accrued portion of the regular retirement benefit.

(E) The plan may provide, after a specified period of service, for nonforfeitable benefits equal to the entire accrued portion of the regular retirement benefit, if such method of providing benefits is approved by the

Secretary, after notice and opportunity to be heard, as substantially consistent with the purposes of this section as expressed in paragraphs (A) and (B) of this paragraph.

(2) Every pension plan created on or after the date of enactment of this Act shall provide that the rights of the employees to receive the entire accrued portion of their regular retirement benefits shall be nonforfeitable after a specified period of service not to exceed ten years or as provided in subparagraphs (C) or (D) of the preceding paragraph.

(b) In computing the period of service under the plan, an employee's entire service with the employer or employers contributing to or maintaining the plan from the inception of the plan shall be considered, except the following may be disregarded:

(1) service prior to age twenty-five;

(2) service during which the employee declined to contribute to a plan requiring employee contributions;

(3) service with a predecessor of the employer contributing to or maintaining the plan (except where the plan of the predecessor has been continued in effect by the successor employer);

(4) service with an employer prior to the time that

such employer began contributing to or maintaining the plan; and

(5) service broken by periods of suspension of employment, if the rules governing such breaks in service (A) are not unreasonable or arbitrary, and (B) meet standards prescribed by rules of the Secretary; but (C) all service subsequent to four consecutive years of service, without regard to any subsequent periods of suspension of employment, shall be considered in computing the period of service under the plan.

(c) Nothing contained in this title shall be construed to prohibit any plan provision adopted pursuant to regulations of the Secretary of the Treasury or his delegate under section 401(a)(4) of the Internal Revenue Code of 1954 to preclude discrimination.

(d) No pension plan subject to this title to which employees contribute shall provide for forfeiture of benefits which accrued during participation in the plan by the employee and which were attributable to employer contributions, solely because of withdrawal by such employee of amounts attributable to his own contributions.

(e) The Secretary shall prescribe standards, consistent with the purposes of this Act, governing the conditions, including the maximum number of working hours, days, weeks, or months, which shall be considered in computing a

year of covered service under the plan, or a break in service for purposes of this Act. In no case shall a participant's time worked in any period in which he is credited for a period of service for the purposes of this section, be credited to any other period of time unless the plan so provides.

(f) Any pension plan meeting the requirements of paragraph (2) or subparagraph (1)(C) or (1)(D) of the preceding subsection may exercise the option to change its plan provisions to conform to any other vesting standard permitted by such paragraph and subparagraphs; but such a change shall in no instance delay or reduce the present or future nonforfeitable benefits under the previous option for any person who, at the time of the change, was a participant.

(g) Notwithstanding any other provision of this title, a pension plan may allow for vesting of benefits after a lesser period and in a greater amount than is required by this section.

DISTRIBUTION OF NONFORFEITABLE BENEFITS TO TERMINATING PARTICIPANTS

SEC. 204. (a) Nonforfeitable benefits accrued by terminated participants may be distributed in the manner set forth in the plan for payment of regular retirement benefits; except that (1) distribution of such benefits shall, at the election of the terminated participant, commence not later than the earlier of the first date that an active participant, with the

same credited service under the plan, could have exercised any unrestricted option under the plan to receive regular retirement benefits, or age sixty-five, and (2) the manner of distribution set forth in the plan shall be the same for the benefits payable to both those who were participants within the twelve months immediately prior to making application to receive regular retirement benefits and those who terminated participation prior to the twelve months preceding application to receive regular retirement benefits.

(b) Nothing herein shall be construed to prohibit any employee pension plan from providing a reduction to the benefit to be paid any participant on account of such recipient's receipt of benefits under the Social Security Act if—

(1) in the case of a participant who is receiving benefits under such plan on the effective date of this title, such benefit is not decreased by any subsequent increase in benefits received under the Social Security Act; and

(2) in the case of a participant entitled to a nonforfeitable benefit who terminates after the effective date of this title, such benefit is not decreased by any subsequent increases in the benefit levels offered under the Social Security Act after the date of such termination; and

(3) in the case of a participant other than one described in paragraph (1) above entitled to a nonforfeitable benefit who has terminated prior to the effective date of this title, such benefit is not decreased by any subsequent increases in the benefit levels offered under the Social Security Act following such effective date; and

(4) in the case of a participant other than one described in paragraphs (2) and (3) above entitled to an immediate benefit upon termination, such benefit is not decreased by any subsequent increase in benefit levels offered under the Social Security Act following the date of such termination.

EFFECTIVE DATE

Sec. 205. (a) Except as provided in subsection (b), this title shall take effect on the date of enactment.

(b) This title shall first apply to a plan in effect on the date of enactment of this Act two years after the date of enactment of this Act; except that in the case of a plan created or operated under a collective-bargaining agreement in existence as of the date of enactment of this Act, the provisions of this title shall apply five years after the date of enactment of this Act.

TITLE III—FUNDING

COVERAGE

SEC. 301. (a) Except as provided in subsections (b) and (c), this title shall apply to any employee benefit pension plan—

(1) if it is established or maintained by any employer engaged in commerce or in any industry or activity affecting commerce or by such employer together with any employee organization representing employees engaged in commerce or in any industry or activity affecting commerce; or

(2) if such plan is established or maintained by any employer or by any employer together with any employee organization and if, in the course of its activities, such plan, directly or indirectly, uses any means or instruments of transportation or communication in interstate commerce or the mails.

(b) This title shall not apply to any employee pension benefit plan if—

(1) such plan is established or maintained by the Federal Government, by the government of a State, or by a political subdivision of a State, or by any agency or instrumentality of any of the above;

(2) such plan is established and maintained outside

the United States primarily for the benefit of persons who are not citizens of the United States; or

(3) such plan provides contributions or benefits exclusively for a sole proprietor; or, in the case of a partnership, exclusively for one or more partners each of whom owns more than 10 per centum of either the capital interest or the profits interest in such partnership, or

(4) such plan is unfunded and is established or maintained by an employer primarily for the purpose of providing deferred compensation for a select group of management employees.

(c) This title shall not apply to any employee pension benefit plan if the plan is a profit-sharing, savings, or other plan which provides an individual account for each participant and where the benefits payable at or after retirement are based solely upon the amount contributed to the participant's account and any accumulated investment gains or losses thereon.

FUNDING SCHEDULE

SEC. 302. (a) Every employee pension benefit plan subject to this title shall provide for a minimum annual level of contributions for each plan year beginning with the first plan year following the effective date of this title, equal to

the excess (if any) of (i) the sum of the amounts required to be contributed under subsection (b) of this section for each plan year beginning after the effective date of this title, over (ii) the amounts contributed to or under the plan for each of the years beginning after the effective date of this title.

(b) The required annual level of contributions for any year shall be computed as the greater of—

(1) The sum of—

(A) the normal service costs for such year; and

(B) interest on the unfunded portion of the accrued liability (if any) computed under the actuarial cost method used to determine normal service costs; and

(C) a special payment, which, when added to the interest paid under paragraph (B) of this subsection, is equal to (i) the unfunded portion of the accrued liability (if any), computed under the actuarial cost method used to determine normal service costs, divided by (ii) the present value of an annuity certain using an interest rate equal to the interest rate used in valuing the accrued liability and a period of years not greater than—

(I) in the case of any unfunded accrued liability existing on the effective date of this title, forty years; or

(II) in the case of any other unfunded accrued

liability other than a liability described in (i) above; a period of years not to exceed the difference between the average attained age of the active participants in the plan and the regular retirement age, as of the valuation date, but not less than thirty years; or

(2) The excess, if any, of the present value of all nonforfeitable benefits in the plan over the present value of the assets computed by a qualified actuary for the fiscal year, divided by the present value of an annuity certain utilizing an interest rate equal to the interest rate used in calculating the actuarial liabilities and using a period of years not to exceed fifteen.

(A) The present value of nonforfeitable benefits for the purpose of this paragraph shall be computed utilizing only an assumed rate of interest not greater than the interest rate used in calculating the accrued liability and appropriate mortality assumptions.

(B) The excess computed under this paragraph shall not be larger than the excess of the accrued liability of the plan computed under the entry age normal actuarial cost method for all projected benefits over the present value of plan assets.

(c) Nothing in this section shall require a contribution to an employee pension benefit plan in excess of the maxi-

mum deduction available under section 404 of the Internal Revenue Code of 1954 for such plan in any fiscal year.

ENFORCEMENT OF FUNDING STANDARDS

SEC. 303. (a) When the pension plan's level of funding fails to meet the requirements of subparagraphs (A) and (B) of section 302(a)(1), the administrator shall take such steps as are necessary to bring the level of funding into conformity with the benefits offered by the plan. He shall take whatever actions are necessary to protect the rights of all plan participants but shall first make secure the interests of those participants whose rights have become nonforfeitable. The administrator is specifically authorized where necessary to undertake to secure additional levels of funding from the sponsoring employer or employers to the full extent possible, to amend the plan's benefit schedule so as to reduce the value of the accrued and nonforfeitable regular retirement benefits, suspend the further accumulation of regular retirement benefits under the plan, suspend or terminate the operation of the plan or to take any other action in conformity with this act which is necessary to secure the rights of the participants to regular retirement benefits.

(b) When the contributions to a pension plan fall below amounts necessary to meet the requirements of section 302, other than those in subparagraph (1) (A) and (B) of section

302(a), the administrator shall take such steps as are necessary to guarantee that—

(1) the rights of each participant to nonforfeitable benefits accrued to the date of such failure to make appropriate contributions, to the extent then funded, or

(2) the rights of each participant to the amounts credited to his account at such time,

are secure in the event of the plan's termination. The administrator shall take such action for the benefit of all plan participants, but shall first make secure the interest of those participants whose rights to regular retirement benefits have become nonforfeitable under the terms of the plan.

(c) When a plan fails to meet the funding requirements of section 302 for five consecutive years the administrator shall amend the benefit schedule of such plan to reduce the value of the accrued liabilities to such an extent as is necessary to bring the plan's funding schedule into conformity with the requirements of section 302(a).

(d) Whenever the administrator determines that the funding requirements under section 302(a) have not been met, he shall so notify the Secretary and each participant within sixty days and in the event that any action is taken by the administrator pursuant to this section he shall inform

the Secretary and each participant of such action and the reason for such action within sixty days.

(e) In the event the Secretary receives a notification required under section 303(d) he may require the administrator to make such additional reports as he determines are necessary to fully disclose the extent of the level of funding of the plan, the adequacy of protection afforded the participants and the adequacy of the remedy proposed by the administrator.

SPECIAL DISTRIBUTION AND MERGER REQUIREMENTS

SEC. 304. (a) No pension plan to which this title applies may merge, consolidate with, or transfer its assets to, any other pension plan unless each participant in each plan would receive a termination benefit immediately after the merger, consolidation, or transfer which is equal to or greater than the termination benefit he would receive immediately before the merger, consolidation, or transfer.

(b) No pension plan to which this title applies may make a lump sum distribution of the present value of nonforfeitable pension benefits to a participant or beneficiary unless such distribution is equal to or less than the termination benefit he would receive if the plan terminated on the date of such distribution.

(c) Merger, consolidation, transfer of assets, or lump-sum distribution of the assets in excess of $25,000 of any

pension plan subject to this title shall be made unless the administrator has filed an actuarial statement of valuation evidencing compliance with the requirements of this section with the Secretary no less than thirty days prior to such merger, consolidation, transfer, or lump sum distribution.

(d) For the purposes of this section the term "termination benefit" means the amount a participant would receive under section 112 of this Act if the plan were terminated.

EFFECTIVE DATE

SEC. 305. (a) Except as provided in subsection (b), this title shall take effect on the date of enactment.

(b)(1) This title shall first apply to a plan in effect on the date of enactment of this Act two years after the date of enactment of this Act; except that in the case of a plan created or operated under a collective-bargaining agreement in existence as of the date of enactment of this Act but due to expire after such date, the provisions of this title shall apply seven years after the date of enactment of this Act.

(2) Notwithstanding paragraph (1) of this subsection, commencing with the date of enactment of this Act and prior to the effective date of this title any plan in effect on the date of enactment of this title shall provide for a minimum level of contributions equal to or greater than the sum of the normal service cost and interest on the unfunded

liability as described in subparagraphs (1)(A) and (1)(B) of section 302(a) of this title.

TITLE IV—PLAN TERMINATION INSURANCE

ESTABLISHMENT AND APPLICABILITY OF PROGRAM

SEC. 401. (a) There is hereby established a program to be known as the Private Pension Plan Termination Insurance Program (hereinafter referred to as the "Insurance Program"), which shall be administered by and under the direction of the Secretary.

(b) Every plan subject to this title shall obtain and maintain plan termination insurance to cover unfunded vested liabilities incurred prior to enactment of the Act as well as after enactment of the Act.

(c) Upon application by an administrator and the payment of required fees and premiums, the Secretary may provide insurance to cover the unfunded vested liabilities of a plan not otherwise covered by this Act where he determines that such plan conforms with the vesting, funding and all other standards, rules, or regulations required by this Act.

CONDITIONS OF INSURANCE

SEC. 402. (a) The insurance program shall insure participants and beneficiaries of those plans registered under this Act against loss of benefits derived from vested

rights which arise from the complete or the substantial termination of such plans, as determined by the Secretary.

(b) The rights of participants and beneficiaries of a registered pension plan shall be insured under the insurance program only to the extent that—

(1) such rights as provided for in the plan do not exceed: (A) in the case of a right to a monthly retirement or disability benefit for the employee himself, the lesser of 50 per centum of the average monthly wage he received from the contributing employer in the five-year period after the registration date of the plan for which his earnings were its greatest, or $500 a month; (B) in the case of a right of one or more dependents or members of the participant's family, or in the case of a right to a lump-sum survivor benefit on account of the death of a participant, an amount no greater than the amount determined under clause (A);

(2) the plan is terminated more than three years after the date of its establishment or its initial registration with the Secretary, except that the Secretary may in his discretion authorize insurance payments in such amounts as may be reasonable to any plan terminated in less than three years after the date of its initial registration with the Secretary where (A) such plan has

been established and maintained for more than three years prior to its termination, (B) the Secretary is satisfied that during the period the plan was unregistered, it was in substantial compliance with the provisions of this Act, and (C) such payments will not prevent equitable underwriting of losses of vested benefits arising from plan terminations otherwise covered by this title;

(3) such rights were created by a plan amendment which took effect more than three years immediately preceding termination of such plan; and

(4) such rights do not accrue to the interest of a participant who is the owner of 10 per centum or more of the voting stock of the employer contributing to the plan, or of the same percentage interest in a partnership contributing to the plan.

ASSESSMENTS AND PREMIUMS

SEC. 403. (a) Upon registration with the Secretary, each plan shall pay a uniform assessment to the insurance program as prescribed by the Secretary to cover the administrative costs of the insurance program.

(b)(1) Each registered pension plan shall pay an annual premium for insurance at uniform rates established by the Secretary based upon the amount of unfunded vested liabilities subject to insurance under section 402.

(2) For the three-year period immediately following the effective date of this title such premium shall—

(A) not exceed 0.2 per centum of a plan's unfunded vested liabilities with respect to such unfunded vested liabilities incurred after the date of enactment of this Act;

(B) not exceed 0.2 per centum of a plan's unfunded vested liabilities incurred prior to the date of enactment of this Act, where such plan's median ratio of plan assets to unfunded vested liabilities was 75 per centum during the five-year period immediately preceding the enactment of this Act, or in the event of a plan established within the five-year period immediately preceding the date of enactment of this Act, where the plan has reduced the amount of such unfunded vested liabilities at the rate of at least 5 per centum each year since the plan's date of establishment;

(C) not exceed 0.4 per centum or be less than 0.2 per centum of a plan's unfunded vested liabilities incurred prior to the date of enactment of this Act where such plan does not meet the standards set forth in subparagraph (B);

(D) not exceed 0.2 per centum of a plan's unfunded vested liabilities regardless of whether such liabilities were incurred prior to or subsequent to the date of

enactment of this Act with respect to multiemployer plans.

(3)(A) The Secretary is authorized to prescribe different uniform premium rates after the initial three-year period based upon experience and other relevant factors.

(B) Any new rates proposed by the Secretary shall be effective at the end of the first period of ninety calendar days of continuous session of the Congress after the date on which the proposed rates are published in the Federal Register.

(C) For the purpose of subparagraph (B)—

(i) continuity of a session is broken only by an adjournment sine die; and

(ii) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the ninety-day period.

(c) Assessments and premiums referred to in this section shall be prescribed by the Secretary only after consultation with appropriate Government agencies and private persons with expertise on matters relating to assessment and premium structures in insurance and related matters, and after notice to all interested persons and parties.

PAYMENT OF INSURANCE

SEC. 404. (a) Every plan insured under this title shall provide adequate prior notice to the Secretary of intent to ter-

minate the plan, and in the event such notice is not provided and the plan is terminated, the person or persons responsible for failing to give such notice shall be personally liable for any losses incurred by the Pension Benefit Insurance Fund in connection with any plan termination.

(b) As determined by the Secretary, subject to the conditions specified in section 402, the amount of insurance payable under the insurance program shall be the difference between the realized value of the plan's assets and the amount of vested liabilities under the plan.

(c) The Secretary shall, by regulation, prescribe the procedures under which the funds of terminated plans shall be wound up and liquidated and the proceeds therefrom applied to payment of the vested benefits of participants and beneficiaries. In implementing this paragraph, the Secretary shall have authority to:

(1) transfer the terminated fund to the Pension Benefit Insurance Fund for purposes of liquidation and payment of benefits to participants and beneficiaries;

(2) purchase single-premium life annuities from qualified insurance carriers from the proceeds of the terminated plan on terms determined by the Secretary to be fair and reasonable; or

(3) take such other action as may be appropriate to assure equitable arrangements for the payment of

vested benefits to participants and beneficiaries under the plan.

(d) Any person or persons who terminate a plan insured under this title, with intent to avoid or circumvent the purposes of this Act or in violation of the requirements of this Act shall be personally liable for any losses incurred by the Pension Benefit Insurance Fund in connection with such plan termination.

RECOVERY

SEC. 405. (a) Where the employer or employers contributing to the terminating plan or who terminated the plan are not insolvent (within the meaning of section 1(19) of the Bankruptcy Act), such employer or employers (or any successor in interest to such employer or employers) shall be liable to reimburse the insurance program for any insurance benefits paid by the program to the beneficiaries of such terminated plan to the extent provided in this section.

(b) An employer, determined by the Secretary to be liable for reimbursement under subsection (a), shall be liable to pay 100 per centum of the terminated plan's unfunded vested liabilities on the date of such termination. In no event however, shall the employer's liability exceed 50 per centum of the net worth of such employer.

(c) The Secretary is authorized to make arrangements with employers, liable under subsection (a), for reimburse-

ment of insurance paid by the Secretary, including arrangements for deferred payment on such terms and for such periods as are deemed equitable and appropriate.

(d)(1) If any employer or employers liable for any amount due under subsection (a) of this section neglects or refuses to pay the same after demand, the amount (including interest) shall be a lien in favor of the United States upon all property and rights in property, whether real or personal, belonging to such employer or employers.

(2) The lien imposed by paragraph (1) of this subsection shall not be valid as against a lien created under section 6321 of the Internal Revenue Code of 1954.

(3) Notice to the lien imposed by paragraph (1) of this subsection shall be filed in a manner and form prescribed by the Secretary. Such notice shall be valid notwithstanding any other provision of law regarding the form and content of a notice of lien.

(4) The Secretary shall promulgate rules and regulations with regard to the release of any lien imposed by paragraph (1) of this subsection.

PENSION BENEFIT INSURANCE FUND

SEC. 406. (a) There is hereby created a separate fund for pension benefit insurance to be known as the Pension Benefit Insurance Fund (hereafter in this section called the insurance fund) which shall be available to the Secretary

without fiscal year limitation for the purposes of this title. The Secretary shall be the trustee of the insurance fund.

(b) All amounts received as premiums, assessments, or fees, and any other moneys, property, or assets derived from operations in connection with this title shall be deposited in the insurance fund.

(c) All claims, expenses, and payments pursuant to operation of the program under this title shall be paid from the insurance fund.

(d) All moneys of the insurance fund may be invested in obligations of the United States or in obligations guaranteed as to principal and interest by the United States.

(e) With respect to such insurance fund, it shall be the duty of the Secretary to—

(1) administer the insurance fund; and

(2) report to the Congress not later than the first day of April of each year on the operation and the status of the insurance fund during the preceding fiscal year and on its expected operation and status during the current fiscal year and the next two fiscal years and review the general policies followed in managing the insurance fund and recommend changes in such policies, including the necessary changes in the provisions of law which govern the way in which the insurance fund is to be managed.

TITLE V—GENERAL PROVISIONS

VARIATIONS; APPEALS BOARD

Sec. 501. (a) The Secretary on his own motion or after having received the petition of an administrator may, after giving interested persons an opportunity to be heard, and in accordance with the provisions of subsection (b) or (c) below, prescribe an alternative method for satisfying any requirement of title II or III, or section 112, with respect to any pension plan or any type of pension plan subject to title II or III or section 112.

(b) The Secretary may prescribe an alternative method for satisfying the requirements of title II or III, or section 112, for such limited period of time as is necessary or appropriate to carry out the purposes of this Act and which will provide adequate protection to the participants and beneficiaries in the plan, whenever he finds that the application of title II or III, or section 112, would—

(1) increase the costs of the parties to the plan to such an extent that there would result a substantial risk to the voluntary continuation of the plan or a substantial curtailment of pension benefit levels or the levels of employees' compensation, or

(2) impose unreasonable administrative burdens with respect to the operation of the plan, havinj due

regard to the particular characteristics of the plan or the type of plan involved;

and where the application of title II or III or section 112 or discontinuance of the plan would be adverse to the interests of all plan participants.

(c) There is hereby established a Variation Appeals Board which shall hear and determine appeals from decisions denying grants of variations in accordance with procedures promulgated by the Secretary pursuant to regulation. Such Board shall include the Secretary of Labor or his designee, the Secretary of Commerce or his designee, and a person jointly selected by the Secretaries of Labor and Commerce from outside the Federal Government who is, by reason of training or experience, or both, familiar with and competent to deal with, problems involving employees' pension plans. The Secretary of Labor or his designate shall serve as presiding officer on such Board. Such non-Federal Government member of the Board shall be compensated at a rate fixed by the Secretary but not in excess of the maximum rate of pay for grade GS–18 as provided under section 5332 of title 5 of the United States Code for each day he is engaged in the work of the Board and, while serving away from his home or regular place of business, may be allowed travel expenses, including per diem in lieu of subsistence, as au-

thorized by section 5703 of title 5, United States Code, for persons in the Government employed intermittently.

STUDIES

SEC. 502. (a) The Secretary is authorized and directed to undertake research studies relating to pension plans, including but not limited to (1) the effects of this Act upon the provisions and costs of pension plans, (2) the role of private pensions in meeting the economic security needs of the Nation, and (3) the operation of private pension plans including types and levels of benefits, degree of reciprocity or portability, and financial characteristics and practices, and methods of encouraging the growth of the private pension system.

(b) The Secretary is authorized and directed to cooperate with the Congress and its appropriate committees, subcommittees, and staff in supplying data, and any other information, personnel, or resources required by the Congress in any study, examination, or report by the Congress relating to pension and retirement benefit plans established or maintained by States or their political subdivisions.

ENFORCEMENT

SEC. 503. (a) Any person who willfully—

(1) violates any provision of this Act, or any rule, regulation, variation, or order issued under any such title,

(2) makes, passes, utters, or publishes any statement in any application, report, document, account, or record filed or kept or required to be filed or kept under the provisions of this Act, or any rule, regulation, variation, or order under this Act, knowing such statement or entry to be false or misleading in any material respect,

(3) forges or counterfeits any instrument, paper, or document, or utters, publishes, or passes as true, any instrument, paper, or document, knowing it to have been forged or counterfeited, for the purpose of influencing in any way the action of the Secretary, or

(4) influences or induces or attempts to influence or induce the Secretary with respect to any action of the Secretary, by fraud, deceit, misrepresentation, or by any manipulative or deceptive device or contrivance,

shall upon conviction be fined not more than $10,000 or imprisoned not more than five years, or both, except that in the case of such violation by a person not an individual, the fine imposed upon such person shall be a fine not exceeding $200,000.

(b) Any plan administrator who fails or refuses to comply with a request as provided in section 105(b)(4) within thirty days (unless such failure or refusal results from matters reasonably beyond the control of the administrator) by mail-

ing the material requested to the last known address of the requesting participant or beneficiary may in the court's discretion be personally liable to such participant or beneficiary in the amount of up to $50 a day from the date of such failure or refusal, and the court may in its discretion order such other relief as it deems proper.

(c)(1) The Secretary shall have power in order to determine whether any person has violated or is about to violate any provision of this Act, to make an investigation and in connection therewith he may require the filing of supporting schedules of the information required to be furnished under section 103 or 104 of this Act and may, where he has reasonable cause, without warrant, enter such places, inspect such records and accounts, and question such persons as he may deem necessary to enable him to determine the facts relative to such investigation. The Secretary shall publish and make available to any interested person or official information concerning any matter which may be the subject of investigation, and shall prepare a report of any investigation undertaken by him. Such report shall contain a record of any facts, conditions, practices, or other matters discovered during the course of his investigation and shall be published within one year of commencement of such investigation.

(2) It shall be unlawful for any person to fail to permit

entry and inspection in accordance with paragraph (1) of this subsection.

(d) For the purposes of any investigation provided for in this Act, the provisions of sections 9 and 10 (relating to the attendance of witnesses and the production of books, records, and documents) of the Federal Trade Commission Act (15 U.S.C. 49, 50) are hereby made applicable to the jurisdiction, powers, and duties of the Secretary or any officers designated by him.

(e) Civil actions under this Act may be brought—

(1) by a participant or beneficiary—

(A) for the relief provided for in subsection (b) of this section, or

(B) to recover benefits due him under the terms of his plan or to clarify his rights to future benefits under the terms of the plan;

(2) by the Secretary, or by a participant, beneficiary or fiduciary for appropriate relief under section 111 (d); or

(3) by the Secretary, or by a participant, beneficiary, or fiduciary to enjoin any act or practice which violates any provision of this Act.

(f)(1) An employee benefit plan may sue or be sued under this Act as an entity. Service of summons, subpena, or other legal process of a court upon trustee or adminis-

trator of an employee benefit plan in his capacity as such shall constitute service upon the employee benefit plan.

(2) Any money judgment against an employee benefit plan shall be enforceable only against a plan as an entity and shall not be enforceable against any other person unless liability against such person is established in his individual capacity under this title.

(g)(1) Civil actions under this title brought by the Secretary or by a participant, beneficiary, or fiduciary may be brought in any court of competent jurisdiction, State or Federal. In any action by a participant under subsection (e)(3) such participant shall maintain such action as a representative of all other participants similarly situated as a class.

(2) Where such an action is brought in a district court of the United States, it may be brought in the district where the plan is administered, where the breach took place, or where a defendant resides or may be found, and process may be served in any other district where a defendant resides or may be found.

(3) Notwithstanding any other law, the Secretary shall have the right to remove an action from a State court to a district court of the United States, if the action is one seeking relief of a kind the Secretary is authorized to sue for under this Act. Any other party may remove an action under

this Act from a State court to a district court of the United States, subject to the requirements contained in section 1331 of title 28, United States Code. Any such removal shall be prior to the trial of the action and shall be to a district court where the Secretary could have initiated such an action.

(h) The district courts of the United States shall have jurisdiction, without respect to the amount in controversy, to grant the relief provided for the subsections (e) (2) and (3) of this section in any action brought by the Secretary. In any action brought under subsection (e) by a participant, beneficiary, or fiduciary, the jurisdiction of the district court shall be subject to the requirements contained in section 1331 of title 28, United States Code.

(i)(1) In any action by a participant or beneficiary, the court in its discretion may allow a reasonable attorney's fee and costs of action to either party.

(2) Except as to actions brought pursuant to subsection (e)(1)(B) of this section and actions brought by the Secretary pursuant to subsections (e)(2) and (e)(3) of this section, no action shall be brought except upon leave of the court obtained upon verified application and for good cause shown, which application may be made ex parte.

(3) A copy of the complaint in any action by a participant or beneficiary shall be served upon the Secretary by

certified mail who shall have the right, in his discretion, to intervene in the action.

(j) In order to avoid unnecessary expense and duplication of functions among Government agencies, the Secretary shall make such arrangements or agreements for cooperation or mutual assistance in the performance of his functions under this Act and the functions of any such agency as he may find to be practicable and consistent with law. The Secretary may utilize the facilities or services of any department, agency, or establishment of the United States or of any State or political subdivision of a State, including the services of any of its employees, with the lawful consent of such department, agency, or establishment of the United States shall cooperate with the Secretary and, to the extent permitted by law, shall provide such information and facilities as he may request for his assistance in the performance of his functions under this Act. However, the Secretary shall not delegate any of his responsibilities under this Act to anyone not an officer or employee of the Department of Labor except as directed under this title. The Secretary shall immediately forward to the Attorney General or his representative any information coming to his attention in the course of the administration of this Act which may warrant consideration for criminal prosecution under the provisions of this Act or other Federal law.

(k) In order to utilize the facilities of the States, the Secretary shall, upon proper application of an appropriate department or agency or any State, authorize such department or agency to require the filing of annual reports as described in section 104 of this Act for those plans exempted from the filing requirement by the Secretary under section 105(a) of this Act. In the case where such authorization is granted the authorized department or agency, with respect to plans domiciled in the State, shall have the discretion to reject such filing pursuant to the provisions of paragraph 105(a)(2) and to utilize the remedies set out in paragraph 105(a)(3) where appropriate. The Secretary may at his discretion appoint such State department or agency as his agent for the purpose of maintaining civil actions under subsection (d) of this title with respect to such plans exempted from the filing requirements under section 105.

ANNUAL REPORT OF SECRETARY

SEC. 504. The Secretary shall submit annually a report to the Congress covering his administration of this Act for the preceding year, and including (1) an explanation of any variances granted under section 501 as well as a status report on any plan currently operating with a variance and its progress in achieving compliance with provisions of titles II and III, and the projected date for terminating the variance; and (2) such information, data, research findings, and

recommendations for further legislation in connection with the matters covered by this Act as he may find advisable.

RULES AND REGULATIONS

Sec. 505. The Secretary shall prescribe such rules and regulations as he finds necessary or appropriate to carry out the provisions of this Act. Among other things, such rules and regulations may define accounting, technical, and trade terms used in such provisions; and may prescribe the form and detail of all reports required to be made under section 304(e); and may provide for the keeping of books and records, and for the inspection of such books and records.

OTHER AGENCIES AND DEPARTMENTS

Sec. 506. In order to avoid unnecessary expense and duplication of functions among Government agencies, the Secretary may make such arrangements or agreements for cooperation or mutual assistance in the performance of his functions under title II or III of this Act, or this title, and the functions of any such agency as he may find to be practicable and consistent with law. The Secretary may utilize, on a reimbursable basis, the facilities or services of any department, agency, or establishment of the United States or of any State or political subdivision of a State, including the services of any of its employees, with the lawful consent of such department, agency, or establishment; and each department, agency, or establishment of the United States is au-

thorized and directed to cooperate with the Secretary and, to the extent permitted by law, to provide such information and facilities as he may request for his assistance in the performance of his functions under title II or III of this Act or this title. The Attorney General or his representative shall receive from the Secretary for appropriate action such evidence developed in the performance of his functions under title II or III of this Act or this title as may be found to warrant consideration for criminal prosecution under the provisions of this Act or other Federal law.

ADMINISTRATION

SEC. 507. (a) Chapters 5 and 7 of title 5, United States Code (relating to administrative procedure) shall be applicable to this Act.

(b) No employee of the Department of Labor shall administer or enforce this Act with respect to any employee organization of which he is a member or employer organization in which he has an interest.

ADMINISTRATIVE ASSESSMENTS AND APPROPRIATIONS

SEC. 508. (a) The Secretary shall, pursuant to regulation, assess each plan which is subject to title II or III of this Act or this title such fees or charges as the Secretary deems appropriate to cover administrative costs with respect to title II or III of this Act or this title incurred by the Secretary, and as are consistent with the policy of title V of the

Independent Offices Appropriation Act of 1952 (31 U.S.C. 483a; 65 Stat. 290).

(b) There are hereby authorized to be appropriated such sums, without fiscal limitation, as may be necessary to enable the Secretary to carry out his functions and duties under this Act.

SEPARABILITY PROVISIONS

SEC. 509. If any provision of this Act, or the application of such provision to any person or circumstances, shall be held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

INTERFERENCE WITH RIGHTS PROTECTED UNDER ACT

SEC. 510. It shall be unlawful for any person to discharge, fine, suspend, expel, discipline, or discriminate against a participant or beneficiary for exercising any right to which he is entitled under the provisions of the plan or this Act, or for the purpose of interfering with the attainment of any right to which such participant may become entitled under the plan, or this Act. The provisions of section 503 shall be applicable in the enforcement of this section.

COERCIVE INTERFERENCE

SEC. 511. It shall be unlawful for any person through the use of fraud, force, or violence, or threat of the use of force or violence, to restrain, coerce, intimidate, or attempt to

restrain, coerce, or intimidate any participant or beneficiary for the purpose of interfering with or preventing the exercise of any right to which he is or may become entitled under the plan, or this Act. Any person who willfully violates this section shall be fined $10,000 or imprisoned for not more than one year, or both.

REGISTRATION OF PLANS

SEC. 512. (a) Every administrator of a pension plan to which title II or III applies shall file with the Secretary an application for registration of such plan. Such application shall be in such form and shall be accompanied by such documents as shall be prescribed by regulation of the Secretary. After qualification under subsection (c), the administrator of such plan shall comply with such requirements as may be prescribed by the Secretary to maintain the plan's qualification under this title.

(b) In the case of plans established on or after the effective date of titles II and III, the filing required by subsection (a) shall be made within six months after such plan is established. In the case of plans established prior to the effective date of this title II and III, such filing shall be made after the effective date of regulations promulgated by the Secretary to implement this section but in no event later than six months after the effective date of titles II and III of this Act.

(c) Upon the filing required by subsection (a), the Secretary shall determine whether such plan is qualified for registration under this title, and if the Secretary finds it qualified, he shall issue a certificate of registration with respect to such plan.

(d) If at any time the Secretary determines that a plan required to qualify under this title is not qualified or is no longer qualified for registration under this title, he shall notify the administrator, setting forth the deficiency or deficiencies in the plan or in its administration or operations which is the basis for the notification given, and he shall further provide the administrator, the employer of the employees covered by the plan (if not the administrator), and the employee organization representing such employees, if any, a reasonable time within which to remove such deficiency or deficiencies. If the Secretary thereafter determines that the deficiency or deficiencies have been removed, he shall issue or continue in effect the certificate, as the case may be. If he determines that the deficiency or deficiencies have not been removed, he shall enter an order denying or canceling the certificate of registration, and take such further action as may be appropriate under the enforcement and other provisions of this Act.

(e) A pension plan shall be qualified for registration

under this section if it conforms to, and is administered in accordance with titles II and III.

(f) The Secretary may, by regulations, provide for the filing of a single report satisfying the reporting and registration requirements of this Act.

(g) Where a pension plan filed for registration under this title is amended subsequent to such filing, the administrator shall (pursuant to regulations promulgated by the Secretary) file with the Secretary a copy of the amendment and such additional information and reports as the Secretary by regulation may require, to determine that there is continued compliance under titles II and III of this Act.

ENFORCEMENT OF REGISTRATION

SEC. 513. Whenever the Secretary—

(1) determines, in the case of a pension plan required to be registered under section 512, that no application for registration has been filed in accordance with section 512, or

(2) issues an order under section 512 denying or canceling the certificate of registration of a pension plan, or

(3) determines, in the case of a pension plan subject to title III, that there has been a failure to make required contributions to the plan in accordance with the provisions of this Act or to pay required assessments

or to pay such other fees or moneys as may be required under this Act,

the Secretary may petition any district court of the United States having jurisdiction of the parties, or the United States District Court for the District of Columbia, for an order requiring the employer or other person responsible for the administration of such plan to comply with the requirements of this Act as will qualify such plan for registration or compel or recover the payment of required contributions, assessments, premiums, fees, or other moneys.

EFFECT ON OTHER LAWS

SEC. 514. (a) It is hereby declared to be the express intent of Congress that, except for actions authorized by section 503(e)(1)(B) of this Act and except as provided in subsection (b) the provisions of title I of this Act shall supersede any and all laws of the States and of political subdivisions thereof insofar as they may now or hereafter relate to the reporting and disclosure responsibilities of persons acting on behalf of employee benefit plans to which title I applies except for plans described in paragraph 105(a)(1)(A) of this Act.

(b)(1) Nothing in title I of this Act shall be construed to exempt or relieve any person from any law of any State which regulates insurance, banking, or securities or to prohibit a State from requiring that there be filed with a State

agency copies of reports required by this Act to be filed with the Secretary.

(2) No State may relieve any trustee or other fiduciary of any obligation relating to the reporting and disclosure responsibilities under title I of this Act.

(c)(1) It is hereby declared to be the express intent of Congress that, if any provision of this Act which relates to an aspect of fiduciary responsibility applies to a plan, then no State law which relates to the same aspect of fiduciary responsibility shall be applied to such plan.

(2) No State may relieve any trustee or other fiduciary of any obligation under any section of title I of this Act.

(d) It is hereby declared to be the express intent of Congress that the provisions of titles II and III shall supersede any and all laws of the States and of political subdivisions thereof insofar as they may now or hereafter relate to the vesting of participant's benefits in employee benefit plans, the funding requirements for employee benefit plans or the adequacy of financing of employee benefit plans.

(e) Nothing in this section shall be construed to prohibit a delegation of authority by the Secretary to an appropriate State agency as permitted under section 105 of title I of this Act.

(f) Nothing in this Act shall be construed to alter, amend, modify, invalidate, impair, or supersede any law of the United States (other than the Welfare and Pension Plans Disclosure Act) or any rule or regulation issued under any such law.

93D CONGRESS 1st Session } HOUSE OF REPRESENTATIVES { REPORT No. 93–533

EMPLOYEE BENEFIT SECURITY ACT OF 1973

OCTOBER 2, 1973.—Committeed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. PERKINS, from the Committee on Education and Labor, submitted the following

REPORT

together with

SUPPLEMENTAL, ADDITIONAL, AND INDIVIDUAL VIEWS

[To accompany H.R. 2]

The Committee on Education and Labor, to whom was referred the bill (H.R. 2) to revise the Welfare and Pension Plans Disclosure Act, having considered the same, report favorably thereon with an amendment and recommend that the bill, as amended, do pass. The amendment substitutes all after the enacting clause and inserts a substitute text which appears in italic type in the reported bill.

I. SYNOPSIS

The Employee Benefit Security Act as reported by the Committee is designed to remedy certain defects in the private retirement system which limit the effectiveness of the system in providing retirement income security. The primary purpose of the bill is the protection of individual pension rights, but the committee has been constrained to recognize the voluntary nature of private retirement plans. The relative improvements required by this Act have been weighed against the additional burdens to be placed on the system. While modest cost increases are to be anticipated when the Act becomes effective, the adverse impact of these increases have been minimized. Additionally, all of the provisions in the Act have been analysed on the basis of their projected costs in relation to the anticipated benefit to the employee participant. In broad outline, the bill is designed to:

(1) establish equitable standards of plan administration;

(2) mandate minimum standards of plan design with respect to the vesting of plan benefits;

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(3) require minimum standards of fiscal responsibility by requiring the amortization of unfunded liabilities;

(4) insure the vested portion of unfunded liabilities against the risk of premature plan termination; and

(5) promote a renewed expansion of private retirement plans and increase the number of participants receiving private retirement benefits.

Provision is made for the imposition of criminal penalties on those willfully violating their duties under the Act. The Labor Department is given primary authority to administer the provisions of the Act, but the Committee has placed the principal focus of the enforcement effort on anticipated civil litigation to be initiated by the Secretary of Labor as well as participants and beneficiaries.

II. Background

The private pension system is a relatively modern economic institution tracing its role as an important social and economic factor only from the mid 1940's. A variety of converging financial and social trends in our society have created a favorable environment for the growth and expansion of private deferred compensation schemes and retirement programs in general. As our economy has matured, an ever increasing number of employers have recognized their responsibility for the physical and economic welfare of their employees, even for the years beyond retirement. Its development parallels and is a response to the transition of the American life style from its rural agrarian antecedents into its present urbanized, wage earner society. The dynamic asset growth necessary to meet its responsibilities has placed the private pension system in a position to influence the level of savings, the operation of our capital markets, and the relative financial security of millions of consumers, three of the fundamental elements of our national economic security.

The growth of the private pension movement in the United States proceeded slowly until the years preceding World War II. As the full implications of the economic changes sweeping the nation were felt, American beliefs and attitudes regarding retirement security changed. The passage of the Railroad Retirement Act and the Social Security Act marked the turning point in American thinking, and dissatisfaction with those early governmental programs contributed to an accelerated interest in private retirement plans. The wage freezes imposed during World War II and the Korean conflict focused increased attention on the deferred component of compensation as a means of avoiding the freeze restrictions.

In 1947 a series of administrative proceedings and court decisions under the National Labor Relations Act of 1935 held that pensions were a form of remuneration for the purposes of that Act, and they accordingly became mandatory subjects of collective bargaining. (Inland Steel Company v. NLRB, 170 f.2d 247 (7th Cir. 1948), cert. denied, 336 U.S. 960 (1949)). In the same time period a Presidential fact finding commission in presenting its report on the steel industry labor dispute in 1949 stated that:

> We think all industry in the absence of adequate Government programs, owes an obligation to workers to provide for

> maintenance of the human body in the form of medical and similar benefits and full depreciation in the form of old age retirement—in the same way as it now does for plant and machinery.

In 1940, an estimated four million employees were covered by private pension plans; in 1950, the figure had increased to almost 10 million and in 1960 over 21 million were covered. Currently, over 30 million employees or almost one half of the private non-farm work force are covered by these plans. This phenomenal expansion of coverage has been matched by an even more startling accumulation of assets to back the benefit structure. Today, in excess of $150 billion in assets are held in reserve to pay benefits credited to private plan participants.

This rapid growth has constituted the basis for legislative efforts at both the federal and state levels to assure equitable and fair administration of all pension plans.

Various aspects of pension plans have been affected to some degree by most of the major labor legislation of the twentieth century, including the National Labor Relations Act (1935), the Labor Management Relations Act (1947), and the Labor Management Reporting and Disclosure Act (1959). However, not until 1958, with the enactment of the Welfare and Pension Plans Disclosure Act, was legislation effected which was specifically designed to exercise regulatory controls over pension and welfare funds. Based upon disclosure of malfeasance and improper activities by pension administrators, trustees, or fiduciaries, the Act was amended in 1962 to designate certain acts of conduct as federal crimes when they occurred in connection with welfare and pension plans. The amendments also conferred investigatory and various regulatory powers upon the Secretary over pension and welfare funds. In the decade since the amendments were enacted, experience has shown that, despite intermittent enforcement of the reporting requirements and the criminal provisions, the protection accomplished by statute has not been sufficient to accomplish Congressional intent.

The Existing Law

The growth and development of the private pension system in the past two decades has been substantial. Yet, regulation of the private system's scope and operation has been minimal and its effectiveness a matter of debate. The assets of private plans, estimated to be in excess of $150 billion, constitute the only large private accumulation of funds which have escaped the imprimatur of effective federal regulation.

At the federal level, there are essentially three federal statutes which, although accomplishing different purposes and vested within different federal departments for enforcement, are all compatible in their regulatory responsibilities. These are the Welfare and Pension Plans Disclosure Act (29 U.S.C. Sec. 301 et. seq.), the Labor Management Relations Act (29 U.S.C. Sec. 141, et. seq.) and the Internal Revenue Code I.R.C. of 1954, Secs. 401–404, 501–503).

A complete description of the federal regulation affecting the administration of private plans can be found in Interim Report of The Private Welfare and Pension Plan Study, 1971, Senate Report No. 92–634 of the 92d Congress 2d Session.

After a comprehensive investigation of abuses in the administration and investment of private fund assets, Congress adopted the Welfare and Pension Plan Disclosure Act in 1958. The policy underlying enactment of this Act was purportedly to protect the interest of welfare and pension plan participants and beneficiaries through disclosure of information with respect to such plans. The essential requirement of the Act was that the plan administrator compile, file with the Secretary of Labor, and send to participants and their beneficiaries upon written request, a description and annual report of the plan. It was expected that the knowledge thus disseminated would enable participants to police their plans. The Act was amended in 1962 to make theft, embezzlement, bribery, and kickbacks federal crimes if they occur in connection with welfare and pension plans. The 1962 amendments also conferred limited investigatory and regulatory powers upon the Secretary of Labor, and required bonding of plan officials.

Experience in the decade since the passage of the above amendments has demonstrated the inadequacy of the Welfare and Pension Plans Disclosure Act in regulating the private pension system for the purpose of protecting rights and benefits due to workers. It is weak in its limited disclosure requirements and wholly lacking in substantive fiduciary standards. Its chief procedural weakness can be found in its reliance upon the initiative of the individual employee to police the management of his plan.

The Labor Management Relations Act, Sec. 302, provides the fundamental guidelines for the establishment and operation of pension funds administered jointly by an employer and a union. The Act is not intended to establish nor does it provide standards for the preservation of vested benefits, funding adequacy, security of investment, or fiduciary conduct.

Tax deduction benefits accruing to employers are prescribed by the Internal Revenue Code under which the employer is granted a deduction within certain limits for contributions made to a qualified plan, and the investment earnings on such plans are made tax-exempt. To attain "qualified status" under the Code, the plan must be (1) for the exclusive benefit of the participants; (2) for the purpose of distributing the corpus or income to the participants; (3) established in such a manner to make it impossible for the employer to use or divert funds before satisfying the plan's liabilities; and (4) not discriminate in favor of officers, stockholders, or highly-compensated or supervisory employees.

The Internal Revenue Code provides only limited safeguards for the security of anticipated benefit rights in private plans since its primary functions are designed to produce revenue and to prevent evasion of tax obligations. The essence of enforcement under the Code lies in the power of the Internal Revenue Service to grant or disallow qualified status to a pension plan, thus determining the availability of statutory tax advantages. The Internal Revenue Service jurisdiction and enforcement capabilities are solely to allow various tax advantages to accrue to employers who establish and maintain pension plans which can qualify for such tax benefit privileges.

In the absence of adequate federal standards, the participant is left to rely on the traditional equitable remedies of the common law of trusts. A few states, including New York, Washington, Wisconsin,

Massachusetts, and California have codified existing trust principles and enacted legislation which requires in many instances a degree of disclosure similar to that required by federal statute.

The fact that statutory rules exist says little as to their efficacy in adjusting inequities that are visited upon plan participants, as evidenced by the hearings before this Committee. In almost every instance, participants lose their benefits not because of some violation of federal law, but rather because of the manner in which the plan is executed with respect to its contractual requirements of vesting or funding. Courts strictly interpret the plan indenture and are reluctant to apply concepts of equitable relief or to disregard technical document wording. Thus, under present law, accumulated pension credits can be lost even when separated employees are within a few months, or even days, of qualifying for retirement.

The proposed bill would, therefore, establish minimum standards of vesting, funding, and fiduciary and a system of compulsory benefit insurance to protect the security of pension rights.

As suggested by the President's Cabinet Committee Report of 1965; "As a matter of equity and fair treatment an employee covered by a pension plan is entitled, after a reasonable period of service, to protection of his future retirement benefit against any termination of his employment." Concern for loss of benefits by workers after long years of labor through circumstances beyond their control was similarly expressed by President Richard M. Nixon on December 8, 1971, when, in a message to the Congress he said, "When a pension plan is terminated, an employee participating in it can lose all or a part of the benefits which he has long been relying on, even if his plan is fully vested . . . even one worker whose retirement security is destroyed by the termination of a plan is one too many."

III. Major Issues

Although the need for legislative reform has been and continues to be widely acknowledged among all persons and sectors affected, federal mandation of essential improvements has been resisted due to the belief that such legislation might impede plan growth. However, the Committee's inquiries have revealed that the costs associated with the vesting and funding proposals in the Act are sufficiently modest as not to constitute a major impediment to plan growth. Additionally, any added cost attributable to the imposition of vesting and funding standards will innure directly to the benefit of the participants in each plan in the form of increased availability of benefits and added security.

The principal issues affecting the vital and basic needs for legislation involve consideration of the essential elements of pensions:

A. Vesting

One of the major private pension plan considerations centers around the concept of vesting. Vesting refers to the nonforfeitable right of interest which an employee participant acquires in the pension fund. The benefit credits may vest in the employee immediately, although in most cases participants do not become eligible for vesting of benefits until a stipulated age or period of service, or a combination of both, is attained.

Upon compliance with the basic requirements of age or service, many plans will grant their participants vested rights to those benefits earned to that time. However, should employment terminate prior to such time, the employee will receive no benefits. Some pension plans, however, specify "graded" vesting formulas, whereby only a defined percentage of the accrued benefits earned will vest upon fulfillment of minimum requirements, and such percentage may increase periodically, as the employee continues in his employment and completes additional service.

Despite the recognized and acknowledged need for pension plans to provide for vesting of earned benefits, if pension promises are to be meaningful to workers, there is need for federal statutory requirements which will compel an employer to grant such vesting benefits. The difficulties and hardships resulting from non-existent or inadequate plan provisions for vesting of benefits have been vividly established by the Committee's studies and hearings.

It is noteworthy that in 1965, the President's Commission on Public Policy and Private Pensions, while acknowledging that there had been some improvement in private plans by increased adoption of vesting provisions, nonetheless found and recommended legislation to make minimum vesting provisions mandatory. That Commission concluded that ". . . the degree of retirement protection in private pension plans varies widely and in many cases remains quite inadequate." (President's Committee on Corporate Pension Funds and other Private Retirement and Welfare Programs, Public Policy and Private Pension Programs: A Report to the President on Private Employee Retirement Plans, January, 1965, p. 39).

The vesting concept recommended by the Cabinet Committee suggested preference for deferred graded vesting. It specifically favored a vesting formula under which 50 percent of an accrued pension would be vested in a plan participant upon completion of 15 years of service, with rights to full vesting of accrued pension credits to occur after 20 years of service. In general, although there has been some discernible progress to permit early vesting of benefits to employees, some employers incline to defer such vesting until the employee reaches a normal or early retirement eligibility formula. This is essentially based upon the belief that it will discourage and deter such employee from leaving the job before reaching retirement age.

Despite claims by opponents that progress made in pension plan provisions to provide vesting manifest movement toward an eventual voluntary vesting system, plans involving substantial numbers of workers which contain no vesting are still not uncommon. Opponents of mandatory vesting believe that compulsory vesting provisions will discourage development of new plans and impede flexibility and latitude in formulating employee benefits because of excessive costs that are certain to result. However, in the face of Committee findings relative to projected costs to plans for imposed vesting, indications are that the resistance of opponents to universal vesting is essentially structured upon extreme reluctance to submit to governmental regulatory measures concerning pension plan administration and operations. In its final analysis, the issue basically resolves itself into whether workers, after many years of labor, whose jobs terminate voluntarily or otherwise, should be denied benefits that have been placed for them in a fund for retirement purposes.

B. FUNDING

Another major issue in private pension plans relates to the adequacy of plan funding. "Funding" refers to the accumulation of sufficient assets in a pension plan to assure the availability of funds for payment of benefits due to the employees as such obligations arise. Today, funding of pension plans for the limited and specific purpose of qualifying for tax benefits permitted by law for contributions made is governed by statutory and regulatory requirements which are under the jurisdiction of the Internal Revenue Service (I.R.S. Code of 1954, Sections 401–404). The minimum funding rules (Treasury Regulations, Sections 1.401–404(c) (1963)) require an employer to make contributions to a pension fund, qualified by the Internal Revenue Service, of amounts at least equal to the pension liabilities being created currently, and the interest due upon those amounts of monies which reflect unfunded accrued liabilities. The inherent weakness of this required minimum funding is that the employer is not required under law to make payments toward the principal of the unfunded accrued liabilities. Without mandatory funding of past service liabilities, a pension plan may never be in a financial posture to meet its pension obligations to its employees.

The pension plan which offers full protection to its employees is one which is funded with accumulated assets which at least are equal to the accrued liabilities, and with a contribution rate sufficient to maintain that status at all times. However, since plans are revised and amended to provide new benefits which create new and different liabilities for the plan, opponents of compulsory funding argue that it is unrealistic to expect that plans maintain a full funding status at all times. The same opposition is voiced for new plans, which invariably assume a large unfunded liability at the outset of the plan, due to the granting of credit for past service by employees to the employer.

The ineffectiveness of funding requirements was acknowledged in the President's Cabinet Committee Report of 1965, when it concluded that ". . . the minimum standards for funding under present tax law do not assure adequate funding. The setting of standards for adequate funding therefore becomes an important public concern." (Public Policy and Private Pension Programs, 1965, pp. 50–51). The promise and commitment of a pension can be fulfilled only when funds are available to pay the employee participant what is owed to him. Without adequate funding, a promise of a pension may be illusory and empty.

C. FIDUCIARY RESPONSIBILITY AND DISCLOSURE

Another area of concern of the Subcommittee has involved the conduct of administration and operations of pension plans. Of particular interest has been the course of conduct in fund transactions, the degree of responsibility required of the fiduciaries, the types of persons who should be deemed pension "fiduciaries," and the standards of accountability they shall be governed by in the management and disposition of pension funds. The only current federal requirement is that the Secretary of Labor require fiduciaries, trustees, etc., to make disclosure of the provisions and financial operations of the pension plan under the Welfare and Pension Plans Disclosure Act.

An important issue relates to the effectiveness of communication of plan contents to employees. Descriptions of plans furnished to employees should be presented in a manner that an average and reasonable worker participant can understand intelligently. It is grossly unfair to hold an employee accountable for acts which disqualify him from benefits, if he had no knowledge of these acts, or if these conditions were stated in a misleading or incomprehensible manner in plan booklets. Subcommittee findings were abundant in establishing that an average plan participant, even where he has been furnished an explanation of his plan provisions, often cannot comprehend them because of the technicalities and complexities of the language used.

IV. Committee Studies and Activities

The General Subcommittee on Labor, pursuant to House Resolution 225, 93d Congress, February 20, 1973 and a prior resolution from the 92d Congress, has conducted a comprehensive and exhaustive study of the private pension system in the United States, with particular emphasis on the impact which such plans have upon the workers covered. The Subcommittee's implementation of the House Resolutions has been a methodical collection and analysis of vital statistics and information from individual and group cases reflecting the internal administration and operations of private pension and welfare plans. An interim staff report was issued in April of 1972 and an in-depth analysis of the cost of vesting proposals was published in February of 1973. During February, March, April and May over twenty days were devoted by the Subcommittee to taking testimony on pension reform issues. These hearings were conducted in Washington, D.C., Pittsburgh, Pennsylvania, Waterbury, Connecticut, Chicago, Illinois, South Bend, Indiana, Seattle, Washington, Honolulu, Hawaii, and San Francisco, California.

Because of the Subcommittee's concern for the cost impact of mandated vesting requirements, an outside consultant, Dr. Howard Winklevoss, Associate Professor of Insurance at the Wharton School of Finance, was retained to prepare an analysis of the various vesting cost proposals. This analysis utilized the computer facilities of both the Wharton School and the House. The complete text of this analysis was published in February 1973.

V. Committee Action

The Committee endorses the concept of a comprehensive private pension reform program. It believes that expeditious enactment of H.R. 2 will institute a program which will achieve a strengthening of the role played by private retirement plans within the fabric of our economic and social structures. Its most important purpose will be to assure American workers that they may look forward, with anticipation, to a retirement with financial security and dignity, and without fear that this period of life will be lacking in the necessities to sustain them as human beings within our society. The enactment of progressive and effective pension legislation is also certain to increase stability within the framework of our nation's economy, since the tremendous resources and assets of the private pension plan system are an integral part of our economy. It will also serve to restore credibility and faith

in the private pension plans designed for American working men and women, and this should serve to encourage rather than diminish efforts by management and industry to expand pension plan coverage and to improve benefits for workers.

The Committee believes that the legislative approach of establishing minimum standards and safeguards for private pensions is not only consistent with retention of the freedom of decision-making vital to pension plans, but in furtherance of the growth and development of the private pension system. At the same time, the Committee recognizes the absolute need that safeguards for plan participants be sufficiently adequate and effective to prevent the numerous inequities to workers under plans which have resulted in tragic hardship to so many.

The Bill reported by the Committee represents an effort to strike an appropriate balance between the interests of employers and labor organizations in maintaining flexibility in the design and operation of their pension programs, and the need of the workers for a level of protection which will adequately protect their rights and just expectations. In adopting this approach, the Committee believes it has designed a bill, which, like the National Labor Relations Act, the wage-hour laws and other labor standards laws, brings the workers' interests up to parity with those of employers. This legislation strikes an appropriate and equitable balance between two opposing schools of thought—those who advocate complete and stringent control of private pensions and those who oppose any form of government supervisory or regulatory control.

The Act does provide for coverage of public employee plans under Title I but excludes them from the other substantive provisions. The Committee is convinced that legislation seeking reform in the public sector must proceed with a thorough study of the effects of such proposals. There are literally thousands of public employee retirement systems operated by towns, counties, authorities and cities in addition to the state and Federal plans. Eligibility, vesting, and funding provisions are at least as diverse as those in the private sector with the added uniqueness added by the legislative process. For this reason the Committee is convinced that additional data and study is necessary before any attempt is made to address the issues of vesting and funding with respect to public plans.

The Committee on Education and Labor ordered H.R. 2 reported unanimously on September 25, 1932.

ESTIMATE OF COSTS

In accordance with clause 7 of Rule XIII the Committee estimates that the projected cost of administering this act will not exceed that amount currently being expended for the present act.

VI. Committee Views

POLICY OF "EMPLOYEE BENEFIT SECURITY ACT"

Underlying the provisions of this Act is a recognition of the necessity for a comprehensive legislative program dealing not only with

malfeasance and maladministration in the plans, or the consequences of lack of adequate vesting, but also with the broad spectrum of questions such as adequacy of funding, plant shut downs and plan terminations, adequate communication to participants, and, in short, the establishment of certain minimum standards to which all private pension plans must conform if the private pension promise is to become real rather than illusory.

DEFINITIONS

The Committee has the following technical notes concerning definitions:

The definition of "employee" is intended to encompass any person who has the status of an "employee" under a collective bargaining agreement.

The exclusion of assets of investment companies regulated under the Investment Company Act of 1940 from the definition of "fund" is not intended to exclude participating shares in an investment company held by the fund.

With respect to the term "profit-sharing retirement plan", it is intended that stock bonus, thrift and savings or similar plans with retirement features be treated as the equivalent of profit-sharing retirement plans for purposes of this Act unless expressly indicated otherwise.

With respect to the term "normal service cost", it is intended that this definition be applied consistent with such cost methods recognized by the Internal Revenue Service unless there is an effort to avoid or evade the funding requirements of this Act.

With respect to the term "non-forfeitable right" or "vested right", it is not contemplated that vesting be required in benefits such as death benefits, disability benefits, or other forms of ancillary benefits provided by the plan. The plan may, of course, at its option, provide for vesting in such benefits.

With respect to "adequate consideration," it is intended that this term be read to include the fair market value of the use of leased property.

In formulating the definition of "multi-employer plan" the Committee was guided by the concept that such a plan, if sufficiently comprehensive in size or scope, would be unlikely to terminate because its existence did not depend on the economic fortunes of one employer or employer entity. The Committee recognized that certain single employer plans have characteristics similar to those of the multi-employer type described in the definition, but, on balance, it is believed that experience on plan terminations provides a reasonable basis for the distinction.

Title I—Disclosure and Fiduciary Standards

Title I represents a major departure from current law. First, by additions to and changes in the reporting requirements designed to disclose more significant information about plans and the transactions engaged in by those controlling plan operations and to provide specific data to participants and beneficiaries concerning the rights and benefits they are entitled to under the plans and the circumstances

which may result in their not being entitled to benefits. Second, by the addition of a new section setting forth responsibilities and proscriptions applicable to persons occupying a fiduciary relationship to employee benefit plans, including a "prudent man" standard for evaluating the conduct of all fiduciaries, and by barring from responsible fiduciary provisions in such plans for a period of five years all persons convicted of certain listed criminal offenses.

REPORTING AND DISCLOSURE

The underlying theory of the Welfare and Pension Plans Disclosure Act to date has been that reporting of generalized information concerning plan operations to plan participants and beneficiaries and to the public in general would, by subjecting the dealings of persons controlling employee benefit plans to the light of public scrutiny, insure that the plan would be operated according to instructions and in the best interests of participants and beneficiaries. The Secretary's role in this scheme was minimal. Disclosure has been seen as a device to impart to employees sufficient information and data to enable them to know whether the plan was financially sound and being administered as intended. It was expected that the information disclosed would enable employees to police their plans. But experience has shown that the limited data available under the present Act is insufficient. Changes are therefore required to increase the information and data required in the reports both in scope and detail. Experience has also demonstrated a need for a more particularized form of reporting so that the individual participant knows exactly where he stands with respect to the plan—what benefits he may be entitled to, what circumstances may preclude him from obtaining benefits, what procedures he must follow to obtain benefits, and who are the persons to whom the management and investment of his plan funds have been entrusted. At the same time, the safeguarding effect of the fiduciary responsibility section will operate efficiently only if fiduciaries are aware that the details of their dealings will be open to inspection, and that individual participants and beneficiaries will be armed with enough information to enforce their own rights as well as the obligations owed by the fiduciary to the plan in general.

FIDUCIARY RESPONSIBILITY

A fiduciary is one who occupies a position of confidence or trust. As defined by the Act, a fiduciary is a person who exercises any power of control, management or disposition with respect to monies or other property of an employee benefit fund, or who has authority or responsibility to do so. It is not the intent of the Committee, however, that where the sole power of control, management or disposition with respect to plan funds rests with the participants themselves, as may be the case with respect to certain plans where the participant has the sole discretion over an individual account established in his name, that such participants shall be regarded as fiduciaries. The fiduciary responsibility section, in essence, codifies and makes applicable to these fiduciaries certain principles developed in the evolution of the law of trusts. The section was deemed necessary for several reasons.

First, a number of plans are structured in such a way that it is unclear whether the traditional law of trusts is applicable. Predominantly, these are plans, such as insured plans, which do not use the trust form as their mode of funding. Administrators and others exercising control functions in such plans under the present Act are subject only to minimal restrictions and the applicability of present State law to employee benefit plans is sometimes unclear. Second, even where the funding mechanism of the plan is in the form of a trust, reliance on conventional trust law often is insufficient to adequately protect the interests of plan participants and beneficiaries. This is because trust law had developed in the context of testamentary and inter vivos trusts (usually designed to pass designated property to an individual or small group of persons) with an attendant emphasis on carrying out the instructions of the settlor. Thus, if the settlor incldes in the trust document an exculpatory clause under which the trustee is relieved from liability for certain actions which would otherwise constitute a breach of duty, or if the settler specifies that the trustee shall be allowed to make investments which might otherwise be considered imprudent, the trust law in many states will be interpreted to allow the deviation. In the absence of a fiduciary responsibility section in the present Act, courts applying trust law to employee benefit plans have allowed the same kinds of deviations, even though the typical employee benefit plan, covering hundreds or even thousands of participants, is quite different from the testamentary trust both in purpose and in nature.

Third, even assuming that the law of trusts is applicable, without detailed information about the plan, access to the courts, and without standards by which a participant can measure the fiduciary's conduct he is not equipped to safeguard either his own rights or the plan assets. Furthermore, a fiduciary standard embodied in Federal legislation is considered desirable because it will bring a measure of uniformity in an area where decisions under the same set of facts may differ from state to state. It is expected that courts will interpret the prudent man rule and other fiduciary standards bearing in mind the special nature and purposes of employee benefit plans intended to be effectuated by the Act.

Finally, it is evident that the operations of employee benefit plans are increasingly interstate. The uniformity of decision which the Act is designed to foster will help administrators, fiduciaries and participants to predict the legality of proposed actions without the necessity of reference to varying state laws.

It is to be noted that the definition of "employee benefit fund" excludes assets of an investment company regulated under the Investment Company Act of 1940 but any participating shares held by the employee benefit fund in an investment company are assets of the fund and subject to coverage under this section.

The Committee also has made provision for contributory plans to equitably distribute any surplus funds remaining on plan termination to the participants in accordance with their rate of contribution. This requirement is applicable only after plan assets have been used to satisfy all liabilities. The Committee believes it is unfair to permit the complete recapture by employers of surplus funds in terminated contributory plans, without regard to the fact that contributions by

the workers helped to generate the surplus. The Committee wishes to emphasize that while it is not passing judgment on any particular case now pending, it has concluded that equitable principles require that this particular subject be governed by a specific rule which reflects what the Committee regards as essential protection for the interests of workers in such plans.

The principles of fiduciary conduct are adopted from existing trust law, but with modifications appropriate for employee benefit plans. These salient principles place a twofold duty on every fiduciary: to act in his relationship to the plan's fund as a prudent man in a similar situation and under like conditions would act, and to act consistently with the principles of administering the trust for the exclusive purposes previously enumerated, and in accordance with the documents and instruments governing the fund unless they are inconsistent with the fiduciary principles of the section.

There follows a list of proscriptions which represent the most serious type of fiduciary misconduct which in one way or another has occurred in connection with some welfare or pension plans. While the magnitude of these improper practices is small in relation to the total number of plans in existence, the seriousness of the improper practices disclosed indicates the need for additional precautions to insure that these specific examples do not become general conditions. The list of proscriptions is intended to provide this essential protection.

Title II—Vesting

Section 201 provides that no pension plan shall require, as a condition for eligibility to participate, a period of service longer than one year or an age greater than 25, whichever occurs later; however, a plan which provides 100% immediate vesting upon entry into plan, may restrict participation to those who are 30 years of age or have three years of service, whichever occurs later.

Earlier eligibility standards were considered and appeared to impose an unwarranted additional cost on plans. Additionally, the Committee believes on the basis of substantial evidence presented that until age 25 a large portion of the work force is still transient and accounting for such employees would impose unduly burdensome and costly record-keeping requirements on plan administrators. The Committee believes that an age 25 entry standard approaches the norm for the majority of plans today.

The exception for plans which provide 100% full vesting upon plan entry is based on the fact that such plans, like the TIAA-CREF plan for college teachers, provide earlier vesting in larger amounts than provided under the bill, and requiring such plans to install earlier membership requirements would impose burdens well beyond the minimum standards approach intended by the Committee, and might compel such plans to sacrifice immediate full vesting on plan entry.

The Act presumes that promised pension benefits are in the form of a conditional deferred wage. While popular attention focuses on the deferred wage aspect of pensions, the Act recognizes that the pension promise is conditional upon completion of minimum periods of service. The imposition of equitable standards to limit the conditions precedent to receipt of pension rights will eliminate most of the situations where workers have lost out on their pensions.

The alternative vesting standards provided for under the bill should impact individual participants on a roughly equivalent basis. The potential for manipulation by carefully shopping for the most stringent standard to limit the incidence of vesting is considered to be modest. In all cases some vesting will occur no later than 10 years after initial employment and full vesting will occur between the 10th and 15th year of employment.

The Committee has endorsed a major innovation which provides for retrospective credit in accrued benefits attributable to service rendered prior to the effective date of the vesting provisions.

Title III—Funding

The Committee believes that actuarially sound funding procedures are indispensable to effective implementation of the purposes of the Act. If employers never went out of business or terminated pension plans before they were completely funded, there would, no doubt, be no persuasive justification for funding standards aside from whatever tax considerations might be applicable. Nevertheless, employers do experience financial or economic difficulties or they undergo varying degrees of corporate reorganization, all of which can lead to premature termination of underfunded plans. A plan termination insurance program provides the essential safeguard to the rights of workers who are trapped by these unforeseen economic hazards but such a program cannot be made practical without being coupled to required standards of funding. To create a plan termination insurance program without appropriate funding standards would permit those who present the greatest risk in terms of exposure to benefit at the expense of employers who have developed conscientious funding programs. The funding standards contained in the Act are designed to lessen that unnecessary exposure by requiring every plan to be funded in a manner which will fully amortize unfunded liabilities.

The basic rights granted by the imposition of vesting standards are of real benefit to the participant only to the extent that adequate provision is made to pay the benefits when due. The vesting standards may be viewed as controlling the volume of the benefit promises made by the plan and the funding provisions as controlling the quality of those promises. The Act recognizes as a basic principle that defined benefit pension plans must be funded on some regular and current fashion. All current accruals of benefits based on current service are required to be paid for immediately. To the extent that a plan has offered benefits not based on current service, i.e. past service credit, the present value of such benefits is required to be amortized over a period of time not to exceed forty years, but over a shorter time period (not less than 30 years) if the average period remaining until retirement is very short.

Title IV—Plan Termination Insurance

Section 401.—Establishment and Applicability of Program

The bill reported by the Committee requires plan termination insurance to cover unfunded vested liabilities incurred prior to, as well as subsequent to, enactment of the Act, in order to prevent employees from being deprived of insurance protection for retirement credits earned before enactment.

The Secretary may provide insurance to plans to cover unfunded vested liabilities of a plan not subject to the Act so long as there is compliance with the vesting, funding and other requirements of the Act and the plan pays the requisite assessments and premiums. This is intended to make insurance coverage under the Act available on a voluntary basis to plans not subject to the Act.

Section 403.—Assessments and premiums

The Committee adopted a provision which requires an initial three-year premium to be paid by the plan, as follows:

(a) For funded vested liabilities incurred after enactment—0.2 percentum of unfunded vested liabilities;

(b) For unfunded vested liabilities incurred prior to enactment—0.2 percentum of unfunded vested liabilities provided the plan was 75 percent funded during the five-year period preceding Act, or if the plan is less than five years old on date of enactment, and if it was reducing unfunded vested liabilities at rate of five percent each year;

(c) For unfunded vested liabilities incurred prior to Act, but where the funding tests above in (b) have not been met—more than .4 percentum and not less than 0.2 percentum of such unfunded vested liabilities;

(d) As to multi-employer plans, both as to unfunded vested liabilities incurred before or after Act—not to exceed 0.2 percentum of all such unfunded vested liabilities.

In order to minimize the risk of shifting to the reinsurance program substantially all unfunded liabilities created prior to enactment, it was believed essential to create two classes of risks for purposes of setting the premium rate. If the plan was being funded in an adequate fashion, i.e., was 75 percent funded or was amortizing unfunded vested liabilities at the rate of five percent each year, it was believed that such a plan was an acceptable risk and the .2 percentum premium rate was appropriate. In the event the plan did not meet the test of funding adequacy, as indicated, it falls in the category of being a higher risk and therefore, can be charged up to twice the amount of normal premium, but no more. Since multi-employer plans, as defined in the bill, have a much lower risk of plan termination, it was believed appropriate to continue charging the .2 percent premium regardless of when the unfunded vested liabilities were incurred.

Section 404.—Payment of Insurance

There are a variety of circumstances under which pension plans terminate. In some cases, the termination proceeds by stages. In other cases, it may happen fairly rapidly. In order to carry out the purpose of the reinsurance program while at the same time protecting the program from undue exposure owing to delays, manipulation, or unforeseen economic hazards following plan termination, the Secretary is provided with sufficient flexibility to determine the most appropriate procedure for winding up terminated plans and assuring effective implementation of the insurance program.

It is also required that plans furnish to the Secretary adequate prior notice of intent to terminate the plan. Persons responsible for giving such notice who fail to do so, or who terminate plans in order to circumvent or avoid the Act, are held personally liable for losses sustained by the insurance program.

Section 405.—Recovery

The Committee recognizes that in order to provide adequate protection to employees against loss of vested benefits owing to premature plan termination, it is necessary for the insurance program to cover all forms of plan termination regardless of the circumstances giving rise to the termination. The Committee also recognized that some degree of employer liability was essential where the employer was not insolvent at the point of plan termination in order to preclude abuse by shifting the financial burden to the plan termination insurance program despite the fact that the employer had available funds to continue funding the plan.

One approach to this problem would be to require financially responsible employers to, in effect, act as self-insurers for the unfunded vested liabilities and those who are not financially responsible to obtain plan termination insurance. This approach, which is supported by precedent in the field of workmen's compensation, for example, was considered and rejected because of the potentially enormous liabilities involved. To require the Secretary to evaluate the financial capabilities of particular employers to assume such potentially enormous liabilities might have an adverse effect on the employer's competitive position and on his continued healthy growth.

Having determined that participation in the plan termination insurance program was essential for all plans, and that some degree of employer liability was necessary, the question of the degree of such liability becomes important. The Committee had concern that if the degree of liability was absolute to the extent of the employer's assets, it might drive some employers to the brink of bankruptcy, impose substantial economic hardship, or discourage the establishment of plans or the reasonable liberalization of benefits.

Accordingly, the Committee endorsed a formula of employer liability which requires the employer to reimburse the plan termination insurance program for the total amount of insurance paid, but in no event greater than 50% of employer's net worth at time of plan termination.

In addition, as a result of plan termination field hearings held by the Subcommittee, numerous instances were disclosed where acquiring companies that terminated pension plans failed to take over the liability for vested benefits owed to the employees of the predecessor company. Since this circumstance could also arise in connection with the reinsurance provision, it is necessary to strengthen the reinsurance provisions by requiring successors-in-interest to be liable for reimbursements owned by predecessor companies.

In order to make the liability of the employer for reimbursement of insurance paid meaningful, it was considered essential to provide a mechanism for enforcement of such liability through giving the government a lien on employer property for unpaid amounts due.

With respect to the Secretary's authority to treat portions of multiemployer plans as terminated for purposes of applying the plan termination insurance provisions, it should be noted that the contributing employers in such arrangements are free to arrange indemnification agreements among themselves in connection with the plan's application for insurance coverage under Title IV, so that employer liability for reimbursement of insurance paid under Title IV can be allocated under terms that the parties themselves have agreed to as equitable.

Title V—Enforcement

The enforcement provisions have been designed specifically to provide both the Secretary and participants and beneficiaries with broad remedies for redressing or preventing violations of the Act. The intent of the Committee is to provide the full range of legal and equitable remedies available in both state and federal courts and to remove jurisdictional and procedural obstacles which in the past appear to have hampered effective enforcement of fiduciary responsibilities under state law for recovery of benefits due to participants. For actions in federal courts, nationwide service of process is provided in order to remove a possible procedural obstacle to having all proper parties before the court.

Except where plans are not subject to this Act and in certain other enumerated circumstances, state law is preempted. Because of the interstate character of employee benefit plans, the Committee believes it essential to provide for a uniform source of law in the areas of vesting, funding, insurance and portability standards, for evaluation of fiduciary conduct, and for creating a single reporting and disclosure system in lieu of burdensome multiple reports. As indicated previously, however, the Act expressly authorizes cooperative arrangements with state agencies as well as other federal agencies, and provides that state laws regulating banking, insurance or securities remain unimpaired.

The Act makes it unlawful for any person to discharge, fine, suspend, expel, discipline or discriminate against a participant or beneficiary for exercising any right to which he is entitled under the provisions of the plan or the Act, or for the purpose of interfering with the attainment of any right to which such participant may become entitled under the plan or the Act.

The Act makes it a criminal offense for any person to use fraud, force, or violence or threats thereof to restrain, coerce, intimidate or attempt to restrain, coerce, intimidate any participant or beneficiary for the purpose of interfering with or preventing the exercise of any right to which he is or may become entitled under the plan, or the Act.

Although the instances of these occurrences are relatively small in number, the Committee has concluded that safeguards are required to preclude this type of abuse from being carried out and in order to completely secure the rights and expectations brought into being by this legislation.

VII. Section-by-Section Analysis

Purposes

The Employee Benefit Security Act is designed (1) to establish minimum standards of fiduciary conduct for Trustees, Administrators and others dealing with retirement plans, to provide for their enforcement through civil and criminal sanctions, to require adequate public disclosure of the plan's administrative and financial affairs, and (2) to improve the equitable character and soundness of private pension plans by requiring them to: (a) vest the accrued benefits of employees with significant periods of service with an employer, (b) meet minimum standards of funding and (c) guarantee the adequacy of the

plan's assets against the risk of plan termination prior to completion of the normal funding cycle by insuring the unfunded portion of the benefits promised.

Section 2. Findings and declaration of policy

Section 3. Definitions:

1. Employee Welfare Benefit Plan
2. Employee Pension Benefit Plan
3. Employee Benefit Plan (or Plan)
4. Employee Organization
5. Employer
6. Employee
7. Participant
8. Beneficiary
9. Person
10. State
11. Commerce
12. Industry or Activity Affecting Commerce
13. Secretary
14. Party in interest
15. Relative
16. Administrator
17. Separate Account
18. Adequate Consideration
19. Nonforfeitable (Pension Benefit or Right)
20. Security
21. Fiduciary
22. Regular Retirement Benefit
23. Accrued Portion of the Regular Retirement Benefit
24. Regular Retirement Age
25. Vested Liabilities
26. Current Value
27. Present Value
28. Investment Company not a Fiduciary
29. Normal Service Cost
30. Present Value of an Annuity Certain
31. Accrued Liability
32. Multi-Employer Plan
33. Unfunded Accrued Liability
34. Advanced Funding Actuarial Cost Method (Actuarial Cost Method)

TITLE I—FIDUCIARY RESPONSIBILITY AND DISCLOSURE

Section 101. Coverage

Title I would cover all private employee benefit plans under Commerce Clause jurisdiction except:

1. Plans of the Federal government;
2. Plans required under workmen's compensation, unemployment compensation, and disability insurance laws;
3. Plans established or maintained outside the United States for the benefit of non-United States citizens;
4. Unfunded deferred compensation schemes of top executives.

Section 102. Duty of disclosure and reporting

The administrator of a pension or welfare plan would be required to publish to each participant or beneficiary a description of the plan as set forth in section 103 and a summary of the annual financial report as set forth in section 104. The report would be in such form and detail as the administrator finds necessary to disclose fully and fairly all pertinent facts.

Upon termination of a pension or welfare plan, the administrator would be required to file a special terminal report as prescribed by the Secretary of Labor.

Section 103. Description of the plan

Plan descriptions would be required to be published within 120 days after the establishment of a plan or within 120 days after a plan be-

comes subject to this title, whichever is later. Amendments to plans would have to be published within 120 days, and descriptions would have to be republished at least every five years. The description would have to be comprehensive and written in a manner calculated to be understood by the average plan participant. Among other things it would have to include: the name and address of the administrator; the schedule of benefits; a description of the plan's vesting provisions; the source of the plan's financing; and the procedures to be followed in presenting claims for benefits as well as those for appealing claims which are denied.

Section 104. Annual reports

An annual financial report to the Secretary of Labor would be required by this section for all plans. Sec. 105 provides that the Secretary shall exempt plans with less than 26 and may exempt plans with less than 100 participants. Information required in the report would include:

An audit and opinion by an independent qualified public accountant (with exceptions for public plans and when financial statements are certified by a bank or insurance carrier);

An actuarial statement of valuation (where appropriate) accompanied by a certification from the actuary preparing the valuation;

The number of employees, benefits paid, and information fiduciaries, trustees and administrators and compensation paid them;

A summary financial statement of assets and liabilities;

A summary of receipts and disbursements;

A schedule of all assets listed by issuer;

A schedule of known party-in-interest transactions;

A schedule of loans which are in default and uncollectible;

A schedule of leases which are in default and uncollectible;

A bank or insurance carrier statement of assets and liabilities for common and collective trusts.

If some or all of the plan's assets are held in common or collective trust maintained by a bank or similar institution or in a separate account maintained by an insurance carrier, the bank or carrier would also be required to file a statement of assets and liabilities.

If some or all of the benefits under the plan are provided by an insurance carrier or other organization, such report would also have to include: The premium rate or subscription charge and the total premium or subscription charges paid to each carrier and the approximate number of persons covered by each class of benefits; the total premiums received, the approximate number of persons covered by each class of benefits, and the total claims paid by such carriers, or, if separate experience ratings are not kept, a statement as to the basis of a carrier's premium rate or a copy of the financial report of the carrier.

Section 105. Publication

The Secretary would be authorized to reject any report which after a hearing before him was found to be incomplete or to contain a qualified opinion by an accountant or an actuary.

A copy of the plan description and each annual report would have to be filed with the Secretary of Labor who would make them available for inspection in the public document room of the Department of

Labor. The administrator would be required to make copies of the annual report and plan description as well as the bargaining agreement, and trust instrument creating the plan available for examination by any plan participant or beneficiary in the administrator's principal office, and in such other places as necessary to fully and fairly disclose all pertinent facts.

All pension and welfare plan participants would be furnished with a copy of the plan description initially and at the time of amendment, including:

A schedule of benefits;

Eligibility and vesting provisions;

Claim procedures and remedies;

Basis of financing;

Other relevant plan provisions affecting their rights and the annual report, including a summary financial statement of assets and receipts and disbursements, and the ratio of assets to value of nonforfeitable pension benefits.

Upon written request to the plan administrator, a participant could receive a copy of a statement as to his or her rights and the amount of any nonforfeitable benefit; and a copy of the plan, trust, bargaining agreement or other document. All newly vested would receive notification at the time their benefits became nonforfeitable. These copies would be furnished at the cost of reproduction.

Upon termination, all pension plan participants would receive a statement showing his or her benefits, indicating when and how they may be claimed, and including any other information affecting their rights.

A statement of a pension plan participant's right to deferred vested benefits from former pension plans would be furnished upon request to the Social Security Administration and when action is taken on the participant's Social Security account. To assure timely filings and payment of vested benefits, the address and identity of all plans would be kept up-to-date.

Section 106. Disclosure of benefit rights to participants

The administrator is required to inform each participant when his benefits become nonforfeitable. Upon written request of any participant or beneficiary, the administrator is required to disclose the rights of that participant.

Violation of the provisions dealing with the retention of records subjects a person to a fine of up to $5,000 and/or imprisonment of up to two years. Violations of the provisions of 111(b)(2) (dealing with prohibited transactions) would subject a person to a fine of up to $10,000 and/or up to five years' imprisonment.

This section would give the Secretary of Labor authority to investigate any plan. He would be given authority to demand sufficient information as he may deem necessary to enable him to conduct his investigations.

Plan participants, beneficiaries, or the Secretary of Labor on behalf of the participants and beneficiaries would be allowed to bring civil actions to redress breaches of a fiduciary's responsibility or to remove a fiduciary who has failed to carry out his duties. The Secretary would also be empowered to bring an action to enjoin any act or practice

which appears to him to violate the title. Civil actions brought by a participant or beneficiary may be brought in any court, State or Federal. However, the Secretary would have the right to intervene in a case and remove it to a Federal district court. In any actions by a participant or beneficiary, the court could, at its discretion, allow reasonable attorneys' fees and costs of action to either party. Class actions shall be brought where requirements for class actions could be met.

Section 107.

All reports filed with the Secretary shall be public information.

Section 108.

Detailed records must be retained for six years.

Section 109.

Proven reliance upon a regulation or written interpretation by the Secretary of Labor would constitute a defense in a criminal or civil proceeding under certain sections of the act.

Section 110.

Every person subject to the fiduciary provisions of the act would have to be bonded.

Section 111. Fiduciary responsibility

This section would deem every employee benefit fund to be a trust held for the exclusive purpose of providing benefits to participants and their beneficiaries as well as defraying reasonable administrative expenses. Each plan would have to be in writing.

A fiduciary is defined in section 3 (29) as anyone who exercises any power of control, management or disposition with regard to a fund's assets or who has authority to do so or who has authority or responsibility in the plan's administration. Fiduciaries would be required to discharge their duties with respect to the fund ". . . solely in the interest of the participants and with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims."

A fiduciary would also have to diversify the investments, except in the case of profit-sharing, stock bonus, or thrift and savings plans, so as to minimize the risk of large losses unless under the circumstances it is prudent not to do so and in accordance with the documents and instruments governing the fund.

A fiduciary would be specifically prohibited from making the following transactions:

> Dealing with such fund for his own account . . .
>
> Acting in any transaction involving the fund on behalf of a party adverse to the interests of the plan or participants . . .
>
> Receiving personal consideration from any party dealing with the fund in connection with a transaction involving the fund . . .
>
> Transferring property to any party in interest for less than adequate consideration . . .
>
> Permitting the acquisition of property from any party in interest for more than adequate consideration.

Section 112. Pension plan termination

An equitable priority distribution of assets would be provided upon plan termination. Assets not previously allocated to individual accounts would have to be distributed according to the following priorities:

(a) Contributions by employees would be returned;

(b) Those presently receiving benefits and those who could voluntarily elect to receive benefits;

(c) Those other than in (b)—to the extent of their vested benefits;

(d) All others, including the non-vested benefits of those in (c).

Benefit increases within the five years prior to plan termination would trigger an allocation based on the prior benefit formula, any remaining assets being distributed on the basis of increases in the more recent benefit formulas:

(e) Investment income attributable to employee contributions would be distributed pro rata to the employees' accounts.

(f) Any benefit liabilities incurred as a result of plan termination would be given last priority.

(g) Any remaining assets would be returned to the employer if the plan so provides; otherwise, they would be distributed pro ratably to the employees.

Section 113.

Certain persons convicted of crimes may not serve as officers, administrators, trustees, or paid consultants.

Section 114.

A 15-member Advisory Council on Employee Welfare and Pension Benefit Plans would be established.

Section 115.

The Welfare and Pension Plans Disclosure Act would be repealed upon the effective date of the act, which would be six months after enactment.

TITLE II—VESTING AND ELIGIBILITY REQUIREMENTS

Section 201. Coverage

Title II would cover all private pension benefit plans including profit-sharing plans which provide benefits after retirement, except:

1. Federal, State and local plans;
2. Keogh plans benefiting the self-employed and owner-employees;
3. Plans established or maintained outside the United States for the benefit of workers who are not United States citizens;
4. Executive deferred compensation plans; and
5. Secondary plans providing class year vesting.

Section 202. Eligibility requirements

No plan, after the effective date of this title, would be allowed to require as a condition for eligibility to participate in it an age greater than 25 or a period of service longer than one year (three years for plans which provide for immediate 100% vesting or for crediting of

all pre-participation service for benefit purposes), whichever is the later. Existing plans would be permitted to retain their eligibility requirements for three years or until they are amended, whichever is sooner.

Section 203. Nonforfeitable benefits

Every pension plan would be given a choice of one of three vesting rules:

1. Ten-Year Service Rule (100% vested at 10 years of covered service);
2. Graded Fifteen-Year Service Rule (30% vested at eight years of covered service, such percentage increasing by 10% each year until 100% is reached after 15 years of covered service);
3. Rule of 45 (50% vested when age plus covered service equals 45, such percentage increasing by 10% each year until 100% is reached).

The vesting rules use a fully retroactive service provision in calculating the vesting percentage and the amount of the accrued portion of the regular retirement benefit. A plan would be permitted to change vesting rules at any time if provision is made that vested benefits not be reduced or delayed for participants in the plan at the time of change. A plan would always be permitted to allow for vesting of benefits after a lesser period and in a greater amount than is required under any of the three vesting rules.

Class year profit-sharing plans.—Class year plans would be required to vest 100% of the employer's contribution no later than five years after the contribution was made.

Covered service.—In computing the period of covered service under a plan, an employee's entire service with the employer contributing to or maintaining the plan shall be considered. However, service prior to age 25, service during which the employee declined to contribute to a plan requiring employee contributions, service with a predecessor of the employer contributing to or maintaining the plan (except where the plan has been continued in effect by the successor employer), service broken by periods of suspension of employment (provided the rules governing such breaks in service are not unreasonable or arbitrary), and service where a participant has previously attained a 100% nonforfeitable right may be disregarded.

Contributory plans.—No plan may provide for forfeiture (1) of any employee contributions unless agreed to in writing, or (2) of the accrued portion of the regular retirement benefit to the extent that such portion is nonforfeitable and is attributable to employer contributions.

Section 204. Distribution of nonforfeitable benefits to terminating participants

Vested benefits to participants terminating before 65 would have to be distributed, at the option of the participant, at regular retirement age or age 65. Vested benefits to participants terminating after age 65 would have to commence immediately at the option of the participant. Survivor annuity and other options offered by a plan to normal retirees would have to be extended to all terminated vested participants.

Social Security offset plans. Any pension plan with a Social Security offset feature would be required at the time of the first plan amendment, to provide that the amount of any offset not increase (1) for participants receiving benefits and (2) after the date of termination of a vested participant.

Section 205. Effective date

The effective date of this title would be two years after enactment. Collectively bargained plans would be extended up to 30 additional months to conform their bargaining agreements to this title.

TITLE III—FUNDING

Section 301. Coverage

Title III would cover all private pension benefit plans covered under title II except for profit-sharing and other individual account plans and unfunded voluntary fraternal type plans.

Section 302. Minimum funding standard

Every pension plan subject to title III (other than the above) must make annual minimum contributions equal to:

1. Normal cost plus no less than 30 but no more than 40-year amortization of unfunded accrued liabilities for all plan benefits; any accumulated actuarial gains and losses would be spread over the future service of active participants;

or, if larger,

2. A percentage of the unfunded portion of the present value of the nonforfeitable pension benefits. The unfunded portion would be recalculated each year so that an interest assumption of 5% would reduce the remaining unfunded portion by about 9.2% per annum or by about 57% in 20 years or 72% in 30 years.

Contributions made in excess of the minimum could be used to offset future minimum contributions, thereby permitting funding flexibility. Required minimum contributions in excess of tax deductible limits would be permitted to be carried over to succeeding years where tax deductions would be allowed.

Section 303. Enforcement of funding requirements; variances

Application would have to be made to the Secretary for a waiver of part or all of a minimum funding contribution. Benefits could not be increased until all such waived contributions had been paid off. After five waivers in a ten-year period, the Secretary could, after notice and hearing, order the termination of the plan or the merger of the plan with another plan of the employer. Benefits could not be increased by amendment during a period of waiver.

Section 305. Effective date

The effective date of this title would be two years after enactment. Collectively bargained plans would be extended up to 7 years to conform their bargaining agreements to this title.

TITLE IV—PLAN TERMINATION INSURANCE

Section 401.

This section establishes a Private Pension Plan Termination Insurance Program administered by the Secretary, which requires plans to

insure unfunded vested liabilities incurred prior to enactment of the Act, as well as after enactment of the Act. The Secretary may provide insurance to cover unfunded vested liabilities of a plan not subject to the Act where he determines that such plan conforms to the vesting, funding and all other standards required by the Act.

Section 402. Conditions of insurance

This section requires the insurance program to insure participants against loss of vested benefits arising from plan termination.

The amount of vested benefit insurance is limited to 50 percent of highest average monthly wage of participants earned over a five year period, or $500 monthly, whichever is the lesser.

No insurance shall be paid if the plan is terminated less than three years from date of establishment or registration unless the Secretary determines that a registered plan was otherwise in substantial compliance with the Act and that the reserve position of the insurance program will not be adversely affected.

Insurance will not cover vested rights created by any plan amendment which took effect less than three years prior to plan termination.

No coverage is extended to participants who own 10 percent or more of employer voting stock.

Section 403. Assessments and premiums

This section requires plans to pay an initial uniform assessment to be prescribed by the Secretary to cover administrative costs of the program. The Secretary shall prescribe an annual premium rate based upon unfunded vested liabilities. For the first three years, the insurance premium shall not exceed 0.2 percent of unfunded vested liabilities incurred after enactment of the Act. With respect to those unfunded vested liabilities incurred prior to enactment the premium shall be 0.2 percent provided that the unfunded vested liabilities of the plan were funded at least 75% during the five-year period preceding enactment.

As to plans which on date of enactment were less than five years old, the premium shall be 0.2 percent, provided that the plan had been reducing its unfunded vested liabilities at a rate of no less than 5 percent annually. In the event plans do not meet the above funding standards, they can be charged a premium not to exceed 0.4 percent or less than 0.2 percent of pre-enactment unfunded vested liabilities.

Also, in the case of multiemployer plans (as defined in the Act), the premium rate for the initial three years shall not exceed 0.2 percent of unfunded vested liabilities, regardless of when such liabilities were incurred.

After the initial three-year period, the Secretary may prescribe an annual rate based upon experience, and unless Congress objects within 90 days, the new premium shall become effective.

The Secretary is required to consult with appropriate private and government agencies on matters relating to the assessment and premium rates before prescribing rates.

Section 404. Payment of insurance

This section requires that plans must notify the Secretary of intent to terminate, and failing to do so will make such persons personally liable for any losses incurred by the Pension Benefit Insurance Fund in connection with plan termination.

The insurance to be paid shall be the difference between the plan's assets and unfunded vested benefits owed at the time of plan termination.

In addition, the Secretary is required to prescribe procedures under which funds of terminated plans shall be liquidated and paid out to cover vested benefits of participants. In implementing this authority, the Secretary may transfer terminated funds under his supervision or purchase annuities from qualified insurance carriers for participants or take such other action as may be appropriate. Persons who terminate a plan with intent to circumvent the Act or the WPPDA shall be personally liable for losses.

Section 405. Recovery

This section provides that, where employers in terminated plans are not insolvent, they or their successors-in-interest may be liable for reimbursement of a portion of insurance benefits paid. The liability of the employer is to pay 100% of the unfunded vested liabilities and in no event shall it exceed 50% of the employer's net worth.

The Secretary shall make arrangements with employers on equitable terms for the reimbursement of insurance paid.

The amount or amounts of any unpaid liability owned by an employer shall constitute a lien in favor of the government, but junior to any lien for unpaid taxes owed to the government.

Section 406. Pension Benefit Insurance Fund

This section establishes within the Labor Department a fund for the deposit of premiums, assessments, etc., made under the Act and for payment of such claims thereunder.

TITLE V. GENERAL PROVISIONS

Section 501. Variations; Appeals Board

The Secretary is authorized to grant variations from the requirements of titles II and III and Section 112. A Variation Appeal Board would be established to hear and determine appeals from decisions denying grants of variations.

Section 502. Studies

This section directs the Secretary to conduct research relating to the effects of the act, the role of private pensions, the operation of public and private pension plans, and methods to encourage the growth of the private pension system.

Section 503. Enforcement

This section would give the Secretary authority to conduct such investigations as may be necessary to determine whether any person has violated or is about to violate any provisions of title II or III or any rules or regulations which would result from enactment of titles II and III. Information about such investigations would be made available to any interested person and included in an annual report by the Secretary. Criminal penalties of five years imprisonment and $10,000 fine or up to a $200,000 fine in the case of a corporate felon would be assessed for willful violation of the Act. Civil actions by the Secretary, participants or beneficiaries to enforce the provisions of the Act are authorized in Federal Court.

Section 504. Annual report of the Secretary

The Secretary would be required to submit an annual report to the Congress covering his administration of the Act.

Section 505. Rules and regulations

This section would authorize the Secretary to prescribe such rules and regulations as he finds necessary to carry out the provisions of the Act.

Section 506. Other agencies and departments

The Secretary would be authorized to enter into agreements that would avoid unnecessary expense and duplication and would permit cooperation among government agencies in performing his functions under title II, or III. He would also be authorized to reimburse other Federal agencies for facilities or services he utilized in doing so. The Attorney General would be authorized to receive such evidence as developed by the Secretary which may be found to warrant consideration for criminal prosecution.

Section 507. Administration

Chapters 5 and 7 of Title 5, United States Code (relating to administrative procedure) would be applicable to this Act.

No employee of the Department of Labor would be able to administer or enforce the Act with respect to any employee organization of which he is a member or employer organization in which he has an interest.

Section 508. This section would authorize to the Secretary such sums as may be necessary to carry out this Act

Section 509. If any provision of this Act were held invalid, the remainder of the Act would not be affected

Section 510. Interference with the rights protected under the Act would be unlawful.—The provisions of sections 404 and 405 would be applicable in the enforcement of this section

Section 511.

Any person who used coercion to interfere with the rights protected under the act would be subject to a $10,000 fine and/or imprisonment for up to one year.

Section 512. Registration

Within six months after the effective date of titles II and III, each pension and profit-sharing plan would have to file an application with the Secretary of Labor for qualification and registration. Plans established after that date would have six months in which to file such application. Plan amendments similarly would have to be reported to the Secretary. A certificate would be issued and continued in force so long as the eligibility, vesting and funding requirements of the Act are met.

Section 513. Enforcement of Registration

The Secretary of Labor may seek a court order to secure compliance whenever a determination is made that no application for registration has been filed, that the application should be denied or the registration cancelled, or that a plan has failed to make the required contributions or to pay such other assessments or fees as are required.

Section 514. Effect on other laws

All State laws would be pre-empted except for those covering plans not subject to titles II and III.

VIII. Changes in Existing Law Made by the Bill as Reported

In compliance with Clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill as reported are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

[WELFARE AND PENSION PLANS DISCLOSURE ACT

[Pub. L. No. 85–836, 85th Cong., 2d Sess., 1958, 72 Stat. 997, as amended by Pub. L. No. 87–420, 87th Cong., 2d Sess., 1962, 76 Stat. 35; 29 U.S.C. §§ 301–09; F.C.A. 29 §§ 301–09.

[*Be it enacted by the Senate and House of Representatives of the United of America in Congress assembled*, That this Act may be cited as the "Welfare and Pension Plans Disclosure Act."

[FINDINGS AND POLICY

[SEC. 2. (a) The Congress finds that the growth in size, scope, and numbers of employee welfare and pension benefit plans in recent years has been rapid and substantial; that the continued well-being and security of millions of employees and their dependents are directly affected by these plans; that they are affected with a national public interest; that they have become an important factor affecting the stability of employment and the successful development of industrial relations; that they have become an important factor in commerce because of the interstate character of their activities, and of the activities of their participants, and the employers, employee organizations, and other entities by which they are established or maintained; that owing to the lack of employee information concerning their operation, it is desirable in the interests of employees and their beneficiaries, and to provide for the general welfare and the free flow of commerce, that disclosure be made with respect to the operation and administration of such plans.

[(b) It is hereby declared to be the policy of this Act to protect interstate commerce and the interests of participants in employee welfare and pension benefit plans and their beneficiaries, by requiring the disclosure and reporting to participants and beneficiaries of financial and other information with respect thereto.

[DEFINITIONS

[SEC. 3. When used in this Act.

[(1) The term "employee welfare benefit plan" means any plan, fund, or program which is communicated or its benefits described in writing to the employees, and which was heretofore or is hereafter established by an employer or by an employee organization, or by both, for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, medical, surgical, or

hospital care benefits, or benefits in the event of sickness, accident, disability, death, or unemployment.

[(2) The term "employee pension benefit plan" means any plan, fund, or program which is communicated or its benefits described in writing to the employees, and which was heretofore or is hereafter established by an employer or by an employee organization, or by both, for the purpose of providing for its participants or their beneficiaries, by the purchase of insurance or annuity contracts or otherwise, retirement benefits, and includes any profit-sharing plan which provides benefits at or after retirement.

[(3) The term "employee organization" means any labor union or any organization of any kind, or any agency or employee representation committee, association, group, or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning an employee welfare or pension benefit plan, or other matters incidental to employment relationships; or any employees' beneficiary association organized for the purpose, in whole or in part, of establishing such a plan.

[(4) The term "employer" means any person acting directly as an employer or indirectly in the interest of an employer in relation to an employee welfare or pension benefit plan, and includes a group or association of employers acting for an employer in such capacity.

[(5) The term "employee" means any individual employed by an employer.

[(6) The term "participant" means any employee or former employee of an employer or any member of an employee organization who is or may become eligible to receive a benefit of any type from an employee welfare or pension benefit plan, or whose beneficiaries may be eligible to receive any such benefit.

[(7) The term "beneficiary" means a person designated by a participant or by the terms of an employee welfare or pension benefit plan who is or may become entitled to a benefit thereunder.

[(8) The term "person" means an individual, partnership, cooperation, mutual company, joint-stock company, trust, unincorporated organization, association, or employee organization.

[(9) The term "State" includes any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, the Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331–1343).

[(10) The term "commerce" means trade, commerce, transportation, or communication among the several States or between any foreign country and any State, or between any State and any place outside thereof.

[(11) The term "industry or activity affecting commerce" means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce and includes any activity or industry "affecting commerce" within the meaning of the Labor-Management Relations Act, 1947, as amended, or the Railway Labor Act, as amended.

[(12) The term "Secretary" means the Secretary of Labor.

[(13) The term "party in interest" means any administrator, officer, trustee, custodian, counsel, or employee of any employee welfare benefit plan or employee pension benefit plan, or a person providing benefit

plan services to any such plan, or an employer any of whose employees are covered by such a plan or officer or employee or agent of such employer, or an officer or agent or employee of an employee organization having members covered by such plan.

[COVERAGE

[SEC. 4. (a) Except as provided in subsection (b), this Act shall apply to any employee welfare or pension benefit plan if it is established or maintained by any employer or employers engaged in commerce or in any industry or activity affecting commerce or by any employee organization or organizations representing employees engaged in commerce or in any industry or activity affecting commerce or by both.

[(b) This Act shall not apply to an employee welfare or pension benefit plan if—

[(1) such plan is administered by the Federal Government or by the government of a State, by a political subdivision of a State, or by an agency or instrumentality of any of the foregoing;

[(2) such plan was established and is maintained solely for the purpose of complying with applicable workmen's compensation laws or unemployment compensation disability insurance laws;

[(3) such plan is administered by an organization which is exempt from taxation under the provisions of section 501(a) of the Internal Revenue Code of 1954 and is administered as a corollary to membership in a fraternal benefit society described in section 501(c)(8) of such Code or by organizations described in sections 501(c)(3) and 501(c)(4) of such Code: *Provided*, That the provisions of this paragraph shall not exempt any plan administered by a fraternal benefit society or organization which represents its members for purposes of collective bargaining; or

[(4) such plan covers not more than twenty-five participants.

[DUTY OF DISCLOSURE AND REPORTING

[SEC. 5. (a) The administrator of an employee welfare benefit plan or an employee pension benefit plan shall publish in accordance with section 8 to each participant or beneficiary covered thereunder (1) a description of the plan and (2) an annual financial report. Such description and such report shall contain the information required by sections 6 and 7 of this Act in such form and detail as the Secretary shall by regulations prescribe and copies thereof shall be executed, published, and filed in accordance with the provisions of this Act and the Secretary's regulations thereunder. No regulation shall be issued under the preceding sentence which relieves any administrator of the obligation to include in such description or report any information relative to his plan which is required by section 6 or 7. Notwithstanding the foregoing, if the Secretary finds, on the record after giving interested persons an opportunity to be heard, that specific information on plans of certain kinds or on any class or classes of benefits described in section 3 (1) and (2) which are provided by such plans cannot, in the normal method of operation of such plans, be practicably ascertained or made available for publication in the manner or for the period prescribed in any provision of this Act, or that the in-

formation if published in such manner or for such period would be duplicative or uninformative, the Secretary may by regulations prescribe such other manner or such other period for the publication of such information as he may determine to be necessary and appropriate to carry out the purposes of this Act."

[(b) The term "administrator" whenever used in this Act, refers to—

[(1) the person or persons designated by the terms of the plan or the collective bargaining agreement with responsibility for the ultimate control, disposition, or management of the money received or contributed; or

[(2) in the absence of such designation, the person or persons actually responsible for the control, disposition, or management of the money received or contributed, irrespective of whether such control, disposition, or management is exercised directly or through an agent or trustee designated by such person or persons.

[DESCRIPTION OF THE PLAN

[SEC. 6. (a) Except as provided in section 4, the description of any employee welfare or pension benefit plan shall be published as required herein within ninety days of the effective date of this Act or within ninety days after the establishment of such plan, whichever is later.

[(b) The description of the plan shall be published, signed, and sworn to by the person or persons defined as the "administrator" in section 5, and shall include their names and addresses, their official positions with respect to the plan, and their relationship, if any, to the employer or to any employee organizations, and any other offices, positions, or employment held by them; the name, address, and description of the plan and the type of administration; the schedule of benefits; the names, titles, and addresses of any trustee or trustees (if such persons are different from those persons defined as the "administrator"); whether the plan is mentioned in a collective bargaining agreement; copies of the plan or of the bargaining agreement, trust agreement, contract, or other instrument, if any, under which the plan was established and is operated; the source of the financing of the plan and the identity of any organization through which benefits are provided; whether the records of the plan are kept on a calendar year basis, or on a policy or other fiscal year basis, and if on the latter basis, the date of the end of such policy or fiscal year; the procedures to be followed in presenting claims for benefits under the plan and the remedies available under the plan for the redress of claims which are denied in whole or in part. Amendments to the plan reflecting changes in the data and information included in the original plan, other than data and information also required to be included in annual reports under section 7, shall be included in the description on and after the effective date of such amendments. Any change in the information required by this subsection shall be reported to the Secretary within sixty days after the change has been effectuated.

[ANNUAL REPORTS

[SEC. 7. (a) The administrator of any employee welfare or pension benefit plan, a description of which is required to be published under

section 6, shall also publish an annual report with respect to such plan "if it covers one hundred or more participants. However, the Secretary, after investigation, may require the administrator of any plan otherwise covered by the Act to publish such report when necessary and appropriate to carry out the purposes of the Act. Such report shall be published as required under section 8, within one hundred and fifty days after the end of the calendar year (or, if the records of the plan are kept on a policy or other fiscal year basis, within one hundred and fifty days after the end of such policy or fiscal year).

[(b) A report under this section shall be signed by the administrator and such report shall include the following:

[The amount contributed by each employer; the amount contributed by the employees; the amount of benefits paid or otherwise furnished; the number of employees covered; a statement of assets specifying the total amount in each of the following types of assets: cash, Government bonds, non-Government bonds and debentures, common stocks, preferred stocks, common trust funds, real estate loans and mortgages, operated real estate, other real estate, and other assets; a detailed statement of the salaries and fees and commissions charged to the plan, to whom paid, in which amount, and for what purposes. The Secretary, when he has determined that an investigation is necessary in accordance with section 9(d) of this Act, may require the filing, of supporting schedules of assets and liabilities." The information required by this section shall be sworn to by the administrator, or certified to by an independent certified or licensed public accountant, based upon a comprehensive audit conducted in accordance with accepted standards of auditing, but nothing herein shall be construed to require such an audit of the books or records of any bank, insurance company, or other institution providing an insurance, investment, or related function for the plan. If such books or records are subject to examination by any agency of the Federal Government or the government of any State. In the case of reports sworn to, but not certified, the Secretary, when he determines that it may be necessary to investigate the plan in accordance with section 9(d) of this Act, shall, prior to investigation by the Department of Labor, require certification of the report by an independent certified or licensed public accountant.

[(c) If the plan is unfunded, the report shall include only the total benefits paid and the average number of employees eligible for participation, during the past five years, broken down by years; and a statement, if applicable, that the only assets from which claims against the plan may be paid are the general assets of the employer.

[(d) If some or all of the benefits under the plan are provided by an insurance carrier or service or other organization such report shall include with respect to such plan (in addition to the information required by subsection (b)) the following:

[(1) The premium rate or subscription charge and the total premium or subscription charges paid to each such carrier or organization and the approximate number of persons covered by each class of such benefits.

[(2) The total amount of premiums received, the approximate number of persons covered by each class of benefits, and the total claims paid by such carrier or other organization; dividends or retroactive rate adjustments, commissions, and administrative service or other fees

or other specific acquisition costs, paid by such carrier or other organization; any amounts held to provide benefits after retirement; the remainder of such premiums; and the names and addresses of the brokers, agents, or other persons to whom commissions or fees were paid, the amount paid to each, and for what purposes: *Provided*, That if any such carrier or other organization does not maintain separate experience records covering the specific groups it serves, the report shall include in lieu of the information required by the foregoing provisions of this paragraph (A) a statement as to the basis of its premium rate or subscription charge, the total amount of premiums or subscription charges received from the plan, and a copy of the financial report of the carrier or other organization and (B), if such carrier or organization incurs specific costs in connection with the acquisition or retention of any particular plan or plans, a detailed statement of such costs.

[(e) Details relative to the manner in which any funds held by an employee welfare benefit plan are held or invested shall be reported as provided under paragraphs (B), (C), and (D) of subsection (f)(1).

[(f) Reports on employee pension benefit plans shall include, in addition to the applicable information required by the foregoing provisions of this section, the following:

[(1) If the plan is funded through the medium of a trust, the report shall include—

[(A) the type and basis of funding, actuarial assumptions used, the amount of current and past service liabilities, and the number of employees, both retired and nonretired covered by the plan;

[(B) a statement showing the assets of the fund as required by section 7(b). Such assets shall be valued on the basis regularly used in valuing investments held in the fund and reported to the United States Treasury Department, or shall be valued at their aggregate cost or present value, whichever is lower, if such a statement is not so required to be filed with the United States Treasury Department;

[(C) a detailed list, including information as to cost, present value, and percentage of total funds of all investments in securities or properties of the employer or employee organization, or any other party in interest, but the identity of all securities and the detail of brokerage fees and commissions incidental to the purchase or sale of such securities need not be revealed if such securities are listed and traded on an exchange subject to regulation by the Securities and Exchange Commission or securities in an investment company registered under the Investment Company Act of 1940, or securities of a public utility holding company registered under the Public Utility Holding Company Act of 1935, and the statement of assets contains a statement of the total investments in common stock, preferred stock, bonds and debentures, respectively, valued as provided in subparagraph (B).

[(D) a detailed list of all loans made to the employer, employee organization, or other party in interest, including the terms and conditions of the loan and the name and address of the borrower: *Provided*, That if the plan is funded through the medium of a trust invested, in whole or in part, in one or more insurance or annuity contracts with an insurance carrier, the report shall

include, as to the portion of the funds so invested, only the information required by paragraph (2) below.

[(2) If the plan is funded through the medium of a contract with an insurance carrier, the report shall include—

[(A) the type and basis of funding, actuarial assumptions used in determining the payments under the contract, and the number of employees, both retired and nonretired, covered by the contract; and

[(B) except for benefits completely guaranteed by the carrier, the amount of current and past service liabilities, based on those assumptions, and the amount of all reserves accumulated under the plan.

[(3) If the plan is unfunded, the report shall include the total benefits paid to retired employees for the past five years, broken down by year.

[(g) If some or all of the benefits under the plan are provided by an insurance carrier or service or other organization, such carrier or organization shall certify to the administrator of such plan, within one hundred and twenty days after the end of each calendar, policy, or other fiscal year, as the case may be, such reasonable information determined by the Secretary to be necessary to enable such administrator to comply with the requirements of this Act.

[(h) The Secretary shall prescribe by general rule simplified reports for plans which he finds that by virtue of their size or otherwise a detailed report would be unduly burdensome, but the Secretary may revoke such provisions for simplified forms for any plan if the purposes of the Act would be served thereby.

[PUBLICATION

[SEC. 8. (a) Publication of the description of the plan and the latest annual report required under this Act shall be made to the participants and to the beneficiaries covered by the particular plan as follows:

[(1) The administrator shall make copies of such description of the plan (including all amendments or modifications thereto upon their effective date) and of the latest annual report available for examination by any participant or beneficiary in the principal office of the plan.

[(2) The administrator shall deliver upon written request to such participant or beneficiary a copy of the description of the plan (including all amendments or modifications thereto upon their effective date) and an adequate summary of the latest annual report, by mailing such documents to the last known address of the participant or beneficiary making such request.

[(b) The administrator of any plan subject to the provisions of this Act shall file with the Secretary of Labor two copies of the description of the plan and each annual report thereon. The Secretary of Labor shall make available for examination in the public document room of the Department of Labor copies of descriptions of plans and annual reports filed under this subsection.

[(c) The Secretary of Labor shall prepare forms for the descriptions of plans and the annual reports required by the provisions of this Act, and shall make such forms available to the administrators of such plans on request.

[ENFORCEMENT

[SEC. 9. (a) Any person who willfully violates any provision of this Act shall be fined not more than $1,000 or imprisoned not more than six months, or both.

[(b) Any administrator of a plan who fails or refuses, upon the written request of a participant or beneficiary covered by such plan, to make publication to him within thirty days of such request, in accordance with the provisions of section 8, of a description of the plan or an annual report containing the information required by sections 6 and 7, may in the court's discretion become liable to any such participant or beneficiary making such request in the amount of $50 a day from the date of such failure or refusal.

[(c) Action to recover such liability may be maintained in any court of competent jurisdiction by any participant or beneficiary. The court in such action may in its discretion, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action.

[(d) The Secretary may, after first requiring certification in accordance with section 7(b), upon complaint of violation not satisfied by such certification, or on his own motion, when he continues to have reasonable cause to believe investigation may disclose violations of this Act, make such investigations as he deems necessary, and may require or permit any person to file with him a statement in writing, under oath or otherwise, as to all the facts and circumstances concerning the matter to be investigated.

[(e) For the purposes of any investigation provided for in this Act, the provisions of sections 9 and 10 (relating to the attendance of witnesses and the production of books, records, and documents) of the Federal Trade Commission Act of September 16, 1914, as amended (15 U.S.C. 49, 50), are hereby made applicable to the jurisdiction, powers, and duties of the Secretary or any officers designated by him.

[(f) Whenever it shall appear to the Secretary that any person is engaged in any violation of the provisions of this Act, he may in his discretion bring an action in the proper district court of the United States or United States court of any place subject to the jurisdiction of the United States, to enjoin such acts or practices, and upon a proper showing a permanent or temporary injunction or restraining order shall be granted.

[(g) The United States district courts and the United States courts of any place subject to the jurisdiction of the United States shall have jurisdiction, for cause shown, to restrain violations of this Act.

[(h) Nothing contained in this Act shall be so construed or applied as to authorize the Secretary to regulate, or interfere in the management of, any employee welfare or pension benefit plan, except that the Secretary may inquire into the existence and amount of investments, actuarial assumptions, or accounting practices only when it has been determined that investigation is required in accordance with section 9(d) of this Act.

[(i) The Secretary shall immediately forward to the Attorney General or his representative any information coming to his attention in the course of the administration of this Act which may warrant consideration for criminal prosecution under the provisions of this Act or other Federal law.

[REPORTS MADE PUBLIC INFORMATION

[SEC. 10. The contents of the descriptions and regular annual reports filed with the Secretary pursuant to this Act shall be public information, and the Secretary, where to do so would protect the interests of participants or beneficiaries of a plan, may publish any such information and data. The Secretary may use the information and data for statistical and research purposes, and compile and publish such studies, analyses, reports, and surveys based thereon as he may deem appropriate.

[RETENTION OF RECORDS

[SEC. 11. Every person required to file any description or report or to certify any information therefor under this Act shall maintain records on the matters of which disclosure is required which will provide in sufficient detail the necessary basic information and data from which the documents thus required may be verified, explained, or clarified, and checked for accuracy and completeness, and shall include vouchers, worksheets, receipts, and applicable resolutions, and shall keep such records available for examination for a period of not less than five years after the filing of the documents based on the information which they contain.

[RELIANCE ON ADMINISTRATIVE INTERPRETATIONS AND FORMS

[SEC. 12. In any action or proceeding based on any act or omission in alleged violation of this Act, no person shall be subject to any liability or punishment for or on account of the failure of such person to (1) comply with any provision of this Act if he pleads and proves that the act or omission complained of was in good faith, in conformity with, and in reliance on any written interpretation or opinion of the Secretary, or (2) publish and file any information required by any provision of this Act if he pleads and proves that he published and filed such information in good faith, on the description and annual report forms prepared by the Secretary and in conformity with the instructions of the Secretary issued under this Act regarding the filing of such forms. Such a defense, if established, shall be a bar to the action or proceeding, notwithstanding that (A) after such act or omission, such interpretation or opinion is modified or rescinded or is determined by judicial authority to be invalid or of no legal effect, or (B) after publishing or filing the description and annual reports, such publication or filing is determined by judicial authority not to be in conformity with the requirements of this Act.

[BONDING

[SEC. 13. (a) Every administrator, officer, and employee of any employee welfare benefit plan or of any employee pension benefit plan subject to this Act who handles funds or other property of such plan shall be bonded as herein provided; except that, where such plan is one under which the only assets from which benefits are paid are the general assets of a union or of an employer, the administrator, officers and employees of such plan shall be exempt from the bonding requirements

of this section. The amount of such bond shall be fixed at the beginning of each calendar, policy, or other fiscal year, as the case may be, which constitutes the reporting year of such plan. Such amount shall be not less than 10 per centum of the amount of funds handled, determined as herein provided, except that any such bond shall be in at least the amount of $1,000 and no such bond shall be required in an amount in excess of $500,000: *Provided*, That the Secretary, after due notice and opportunity for hearing to all interested parties, and after consideration of the record, may prescribe an amount in excess of $500,000, which in no event shall exceed 10 per centum of the funds handled. For purposes of fixing the amount of such bond, the amount of funds handled shall be determined by the funds handled by the person, group, or class to be covered by such bond and by their predecessor or predecessors, if any, during the preceding reporting year, or if the plan has no preceding reporting year, the amount of funds to be handled during the current reporting year by such person, group, or class, estimated as provided in regulations of the Secretary. Such bond shall provide protection to the plan against loss by reason of acts of fraud or dishonesty on the part of such administrator, officer, or employee, directly or through connivance with others. Any bond shall have as surety thereon a corporate surety company which is an acceptable surety on Federal bonds under authority granted by the Secretary of the Treasury pursuant to the Act of July 30, 1947 (6 U.S.C. 6–13). Any bond shall be in a form or of a type approved by the Secretary, including individual bonds or schedule or blanket forms of bonds which cover a group or class.

[(b) It shall be unlawful for any administrator, officer, or employee to whom subsection (a) applies, to receive, handle, disburse, or otherwise exercise custody or control of any of the funds or other property of any employee welfare benefit plan or empolyee pension benefit plan, without being bonded as required by subsection (a) and it shall be unlawful for any administrator, officer, or empolyee of such plan, or any other person having authority to direct the performance of such functions, to permit such functions, or any of them, to be performed by any such person, with respect to whom the requirements of subsection (a) have not been met.

[(c) It shall be unlawful for any person to procure any bond required by subsection (a) from any surety or other company or through any agent or broker in whose business operations such plan or any party in interest in such plan has any significant control or financial interest, direct or indirect.

[(d) Nothing in any other provision of law shall require any person, required to be bonded as provided in subsection (a) because he handles funds or other property of an employee welfare benefit plan or of an employee pension benefit plan, to be bonded insofar as the handling by such person of the funds or other property of such plan is concerned.

[(e) The Secretary shall from time to time issue such regulations as may be necessary to carry out the provisions of this section. When, in the opinion of the Secretary, the administrator of a plan offers adequate evidence of the financial responsibility of the plan, or that other bonding arrangements would provide adequate protection of the beneficiaries and participants, he may exempt such plan from the requirements of this section.

[ADVISORY COUNCIL

[SEC. 14. (a) There is hereby established an Advisory Council on Employee Welfare and Pension Benefit Plans (hereinafter referred to as the Council) which shall consist of thirteen members to be appointed in the following manner: One from the insurance field, one from the corporate trust field, two from management, four from labor, and two from other interested groups, all appointed by the Secretary from among persons recommended by organizations in the respective groups; and three representatives of the general public appointed by the Secretary.

[(b) It shall be the duty of the Council to advise the Secretary with respect to the carrying out of his functions under this Act, and to submit to the Secretary recommendations with respect thereto. The Council shall meet at least twice each year and at such other times as the Secretary requests. At the beginning of each regular session of the Congress, the Secretary shall transmit to the Senate and House of Representatives each recommendation which he has received from the Council during the preceding calendar year and a report covering his activities under the Act for such preceding calendar year, including full information as to the number of plans and their size, the results of any studies he may have made of such plans and the Act's operation and such other information and data as he may deem desirable in connection with employee welfare and pension benefit plans.

[(c) The Secretary shall furnish to the Council an executive secretary and such secretarial, clerical, and other services as are deemed necessary to the conduct of its business. The Secretary may call upon other agencies of the Government for statistical data, reports, and other information which will assist the Council in the performance of its duties.

[(d) Appointed members of the Council shall be paid compensation at the rate of $50 per diem when engaged in the work of the Council, including travel time, and shall be allowed travel expenses and per diem in lieu of subsistence as authorized by law (5 U.S.C. 73b–2) for persons in the Government service employed intermittently and receiving compensation on a per diem, when actually employed, basis.

[(e) (1) Any member of the Council is hereby exempted, with respect to such appointment, from the operation of sections 281, 283, and 1914 of title 18 of the United States Code, and section 190 of the Revised Statutes (5 U.S.C. 99), except as otherwise specified in paragraph (2) of this subsection.

[(2) The exemption granted by paragraph (1) of this subsection shall not extend—

[(A) to the receipt or payment of salary in connection with the appointee's Government service from any source other than the private employer of the appointee at the time of his appointment, or

[(B) during the period of such appointment, to the prosecution or participation in the prosecution, by any person so appointed, of any claim against the Government involving any matter with which such person, during such period, is or was directly connected by reason of such appointment.

[ADMINISTRATION

[SEC. 15. (a) The provisions of the Administrative Procedure Act shall be applicable to this Act.

[(b) No employee of the Department of Labor shall administer or enforce this Act with respect to any employee organization of which he is a member or employer organization in which he has an interest.

[(c) No more than 260 employees shall be employed by the Department of Labor to administer or enforce this Act for the first two years after the enactment of the Welfare and Pension Plans Disclosure Act Amendments of 1962.

[(d) Not more than two million two hundred thousand dollars per year is authorized to be appropriated for the administration and enforcement of this Act, for the first two years after the enactment of the Welfare and Pension Plans Disclosure Act Amendments of 1962.

[EFFECT OF OTHER LAWS

[SEC. 16. (a) In the case of an employee welfare or pension benefit plan providing benefits to employees employed in two or more States, no person shall be required by reason of any law of any such State to file with any State agency (other than an agency of the State in which such plan has its principal office) any information included within a description of the plan or an annual report published and filed pursuant to the provisions of this Act if copies of such description of the plan and of such annual report are filed with the State agency, and if copies of such portion of the description of the plan and annual report, as may be required by the State agency, are distributed to participants and beneficiaries in accordance with the requirements of such State law with respect to scope of distribution. Nothing contained in this subsection shall be construed to prevent any State from obtaining such additional information relating to any such plan as it may desire, or from otherwise regulating such plan.

[(b) The provisions of this Act, except subsection (a) of this section and section 13, and any action taken thereunder, shall not be held to exempt or relieve any person from any liability, duty, penalty, or punishment provided by any present or future law of the United States or of any State affecting the operation or administration of employee welfare or pension benefit plans, or in any manner to authorize the operation or administration of any such plan contrary to any such law.

[SEPARABILITY OF PROVISIONS

[SEC. 17. If any provision of this Act or the application of such provision, to any person or circumstance is held invalid, the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected.

[EFFECTIVE DATE

[SEC. 18. The provisions of this Act shall become effective January 1, 1959.]

SUPPLEMENTAL VIEWS

First, we are satisfied that, after extended hearings and serious discussion, the committee bill generally is a good bill.

However, our deliberations have not led to full or complete agreement on the question of the necessity, economic desirability, cost or legal correctness of plan termination insurance. Initially, provision for this type of insurance was made in a separate bill (H.R. 462) because, without additional information, agreement on this provision (Title IV) was not possible.

Our primary consideration in writing pension reform legislation has been to help assure that workers now covered by pension plans get their expected benefits. At the same time, we have been careful not to inhibit benefit improvements for these covered workers and not to retard the expansion of the pension system in such a way as to deny retirement benefits to workers not now covered.

Accordingly, we reasoned that, by requiring stringent vesting and funding standards, the need for insurance could be realistically negated. Further, inasmuch as it was recognized by the Members of the Committee that legislation could not eliminate all plan terminations, we agreed that the possible losses due to any termination would be mitigated to considerable extent by including provisions in the bill:

(*a*) to prevent dilution of benefit security in business acquisition and merger situations;

(*b*) to provide for partial plan terminations with the approval of the Secretary of Labor;

(*c*) to provide fund distribution priorities on termination so there will be a more equitable distribution of all assets;

(*d*) to prevent "raiding" of assets by participants who leave the plan.

The Committee provision to impose a premium to insure the benefit already being funded on a sound actuarial basis creates an employer liability for the benefit if not funded, and thus radically changes the basic legal structure of all plans. It also increases the cost of funding by the amount of the premium rate, which at this time is not susceptible of determination, but is only estimated.

Because the determination of insufficient funding would in substantial part stem from market value losses of plan assets, the Committee bill is, in effect, insuring against fluctuations in the market. We know of no counterpart obligation in business compelling such insurance.

Additionally, we do not believe it possible to provide such a guartee without ultimate reliance on the Federal treasury.

Finally, Title IV raises a serious constitutional question as to whether by legislation we can change the contract of the employer from a promise to make certain contributions to a fund to a promise to pay the pension supported by a pledge of the employer's assets.

Title IV would require that an employer reimburse the insurance fund for 100% of any amounts paid out by the fund, up to an amount

equal to 50% net worth of the employer. Accordingly, on passage of the Committee bill, an employer would be obligated to carry that liability in his balance sheet. This contingent liability would be such as to make the financial structure of any business appear unsound. Such liability would inevitably discourage additional employers from beginning new pension plans and existing plans from increasing benefits and thereby increasing the employer's liability.

In summary, other provisions of the Committee bill impose minimum eligibility and vesting, require adequate funding, and prevent other events which could dilute benefit security. We believe these additional standards should be effectuated and the need for insurance re-assessed. Pending such re-assessment, Title IV should be deleted.

Albert H. Quie.
John M. Ashbrook.
John N. Erlenborn.
Edwin D. Eshleman.
Orval Hansen.

ADDITIONAL VIEWS

As indicated by my vote to report H.R. 2 out of Committee, I favor legislation to provide reasonable pension protection for the 35 million people enrolled in private pension plans. However, I believe employees covered by State and local government retirement plans are entitled to similar protection, and I fail to understand the Committee's unwillingness to provide them that protection.

To the Committee's credit, it was agreed that public retirement plans should meet the bill's fiduciary standards and requirements for disclosure of information to participants. Minimum vesting and funding standards were rejected, however—the former in the assumption that most public plans provide adequate vesting, and the latter on the grounds that State and local governments and their taxing authority will be with us forever.

Public plans, for the most part, are known to be generous so far as vesting is concerned. Unfortunately, statistics are not available to support this assumption. Notwithstanding this lack of data, my point is that no public employee should be denied the minimum vesting rights the Committee bill asserts every private employee deserves.

The Committee bill provides for a study of these plans. Yet I am constained to point out that the original version of H.R. 2 would have covered these plans and that, in the course of our hearings on pension reform, we did invite interested parties to testify. Only a few accepted the invitation, but those representatives of public employee organizations, legislators, and actuaries who did submit testimony on this aspect endorsed the blanketing of public employees under Federal pension legislation. In spite of this support for inclusion, and with no apparent justification, the provision was dropped.

Presumably, the study recommended in the bill will reveal the funding status of various State and local plans. I submit that public plans are as notorious for their pay-as-you-go, or worse, funding schemes as they are for their comparative generosity in vesting.

Proof of concern by the participants themselves can be found in the courts. Public employees in Philadelphia, for example, have filed suit to compel adequate funding of a $36 million liability. In Detroit, a similar suit involves an $18.2 million liability; and, in my own State, the Illinois Education Association successfully conducted legal action to bring about sounder financing of a $1.7 billion unfunded past service liability together with current liabilities for new benefits.

The seeming perpetual life of the States and their political subdivisions gives us a false confidence, as these court cases attest. Acceptance of the premise that these governments will not go out of business as an argument against funding only postpones the inevitable.

At Thomas Bleakney, a respected actuary and author of *Retirement Systems for Public Employees*, points out, "The basic argument for funding with respect to public systems, in my opinion, is honesty in government—the cost of any governmental service should be known

(and paid for) when the service is provided, and not ignored to be paid for at some future date."

Absent funding, which permits taxpayers to know the effect of new benefits on the government's budget, there is a decided tendency on the part of elected officials to increase benefits substantially and to leave the day of reckoning to their successors. Compounding the problem is the fact that these elected officials are frequently beneficiaries of these plans and so are in the position of negotiating from both sides of the bargaining table.

Not inconceivably, when the already burdened taxpayer is awakened to the true scope of this obligation, objection by court challenges could leave the security of the expected benefits in doubt, if not non-existent.

Court challenges, and the possible loss of benefits, could emanate as well from the premise that an unfunded public retirement plan amounts to deficit financing. Unlike the Federal Government, States are generally prohibited from operating with a deficit and from borrowing to balance the budget. By deferring until another day pension promises made today, a debt is undeniably created.

In some cases, the sudden imposition of a minimal funding requirement on public plans such as that recommended in H.R. 2 for the private sector could create a considerable burden for taxpayers. I do not suggest that identical rules apply to the public sector; but a separate, graded funding formula would mitigate this possibility.

In short, the Committee missed the opportunity in H.R. 2 to foster honesty in government and to give public employees the comprehensive protections and guarantees we deem vital to private employees. To do so is a mistake at the expense of taxpayers and State and local employees.

JOHN N. ERLENBORN,
Member of Congress.

INDIVIDUAL VIEWS

H.R 2 addresses itself to the fundamental concern of pension reform and insofar as the provisions extend, I am in general support of the action taken by the full Committee in reporting out this legislation.

However, I believe there are a number of areas which must be more carefully thought out in the days ahead if this Congress is to truly guarantee the rights of the American worker to a retirement free from financial worry.

In the area of reinsurance, the provisions in H.R. 2 would insure pension benefits in the event of program failure. If we are to truly have a "Retirement Bill of Rights" then we must recognize the inherent interdependence of the reinsurance program, the vesting and other provisions of any proposed legislation. To delete reinsurance would be to create a faulty and untested mechanism of guaranteeing pension benefits.

Earlier this session, I introduced H.R. 9999, the Omibus Pension Security Act. While several provisions of H.R. 9999, including reinsurance, are included in H.R. 2, there are significant factors that must be considered by the House if we are to truly have effective pension reform legislation.

First, it is fundamental to provide the American worker not only with the capability, but the right to appeal through the Secretary into the Courts any time he feels his rights have been violated. Although H.R. 2 and H.R. 4200 recently passed by the Senate does provide for administrative review, the Secretary should be empowered to "go to bat" for a plan participant. Accordingly, Congress and the Ways and Means Committee should consider Section 512 of H.R. 9999 which clearly defines the providing of legal assistance to plan participants.

Second, it is essential that to avoid administrative confusion that we centralize the responsibility for carrying out any pension reform legislation enacted in one agency. H.R. 9999 establishes a Pension Security Administration which would oversee the operation of every aspect of pension reform including vesting, funding, reporting and reinsurance. Whether or not responsibility is eventually lodged in the Department of Labor or the Department of the Treasury, administrative responsibility should be reserved for *one* agency, so that the working American will have to deal with one agency, not two, or three, or four.

Third, even given the above reform areas substantial procedural problems will remain to be worked out in the years ahead. Even with the passage of H.R. 2 and companion legislation from the House Ways and Means Committee no clear mechanism currently exists through which sufficient data and information can be channeled to the Congress to enable us to insure an effective and functional program. H.R. 9999 establishes a Bureau of Pension Statistics designed to keep care-

ful tabs on the problems we encounter down the road after passage of a pension reform law. This is a full-time job and must be done separate of any operating agency. Accordingly, Congress should move to include such a Bureau in any legislation considered.

Fourth, the issue of "portability" should be considered. While it should be recognized that any attempt to make vested funds portable from one plan to another is impracticable and administratively unfeasible, it is possible, and indeed, imperative, that we provide for a system through which an individual may accrue vested funds from several plans throughout his work life-time. It is therefore imperative that Congress carefully consider a means to expedite portability in this matter.

In sum, these are some of the areas which should be addressed in addition to the provisions of H.R. 2. Hopefully, Congress will move to enact legislation including these concepts before the end of the session.

MARVIN L. ESCH,
Member of Congress.

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[From the Congressional Record—House, February 4, 1974]

PUBLIC BILLS AND RESOLUTIONS

Under clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

[*Submitted February 4, 1974*]

By Mr. ULLMAN (for himself and Mr. SCHNEEBELI):

H.R. 12481. A bill to amend the Internal Revenue Code of 1954 to provide pension reform; to the Committee on Ways and Means.

* * * * * * *

[The text of H.R. 12481 as reported appears on the following pages.]

[From the Congressional Record—House, February 5, 1974]

PERMISSION FOR COMMITTEE ON WAYS AND MEANS TO FILE REPORT ON H.R. 12481, AMENDING INTERNAL REVENUE CODE TO PROVIDE PENSION REFORM

Mr. ULLMAN. Mr. Speaker, I ask unanimous consent that the Committee on Ways and Means may have until midnight Tuesday, February 5, 1974, to file a report on the bill, H.R. 12481, to amend the Internal Revenue Code of 1954 to provide pension reform, along with any separate and/or supplemental views.

The SPEAKER. Is there objection to the request of the gentleman from Oregon?

There was no objection.

* * * * * * *

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. ULLMAN: Committee on Ways and Means. H.R. 12481. A bill to amend the Internal Revenue Code of 1954 to provide pension reform (Rept. No. 93–779). Referred to the Committee of the Whole House on the State of the Union.

* * * * * * *

[The texts of H.R. 12481, as reported in the House, and H. Rept. 93–779, follow:]

Union Calendar No. 362

93D CONGRESS
2D SESSION

H. R. 12481

[Report No. 93–779]

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 4, 1974

Mr. ULLMAN (for himself and Mr. SCHNEEBELI) introduced the following bill; which was referred to the Committee on Ways and Means

FEBRUARY 5, 1974

Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

A BILL

To amend the Internal Revenue Code of 1954 to provide pension reform.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SEC. 1001. TABLE OF CONTENTS.

Sec. 1001. Table of contents.
Sec. 1002. Amendment of Internal Revenue Code of 1954.

Subtitle A—Participation, Vesting, Funding, Administration, Etc.

PART I—PARTICIPATION, VESTING, AND FUNDING

Sec. 1011. Minimum participation standards.
Sec. 1012. Minimum vesting standards.
Sec. 1013. Minimum funding standards.
Sec. 1014. Collectively bargained plans.
Sec. 1015. Definitions and special rules.
Sec. 1016. Conforming and clerical amendments.
Sec. 1017. Effective dates.

Part II—Certain Other Provisions Relating to Qualified Retirement Plans

Sec. 1021. Additional plan requirements.
Sec. 1022. Miscellaneous provisions.
Sec. 1023. Study of governmental plans.
Sec. 1024. Protection for employees under Federal procurement, construction, or research contracts or grants.
Sec. 1025. Retroactive changes in plan.
Sec. 1026. Effective dates.

Part III—Registration and Information

Sec. 1031. Registration and information.
Sec. 1032. Duties of Secretary of Health, Education, and Welfare.
Sec. 1033. Enrollment of and reports by actuaries.
Sec. 1034. Effective date.

Part IV—Declaratory Judgments Relating to Qualification of Certain Retirement Plans

Sec. 1041. Tax Court procedure.

Part V—Internal Revenue Service

Sec. 1051. Establishment of office.
Sec. 1052. Authorization of appropriations.

Subtitle B—Other Amendments to the Internal Revenue Code Relating to Retirement Plans

Sec. 2001. Contributions on behalf of self-employed individuals and shareholder-employees.
Sec. 2002. Deduction for retirement savings.
Sec. 2003. Limitations on benefits and contributions.
Sec. 2004. Taxation of certain lump sum distributions.
Sec. 2005. Salary reduction regulations.
Sec. 2006. Rules for certain negotiated plans.

SEC. 1002. AMENDMENT OF INTERNAL REVENUE CODE OF 1954.

Except as otherwise expressly provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1954.

Subtitle A—Participation, Vesting, Funding, Administration, Etc.

PART I—PARTICIPATION, VESTING, AND FUNDING

SEC. 1011. MINIMUM PARTICIPATION STANDARDS.

Part I of subchapter D of chapter 1 (relating to pension, profit-sharing, stock bonus plans, etc.) is amended by adding at the end thereof the following:

"Subpart B—Special Rules

"Sec. 410. Minimum participation standards.
"Sec. 411. Minimum vesting standards.
"Sec. 412. Minimum funding standards.
"Sec. 413. Collectively bargained plans.
"Sec. 414. Definitions and special rules.
"Sec. 415. Limitations on benefits and contributions under qualified plans.

"SEC. 410. MINIMUM PARTICIPATION STANDARDS.

"(a) PARTICIPATION.—

"(1) MINIMUM AGE AND SERVICE CONDITIONS.—A trust shall not constitute a qualified trust under section 401 (a) if the plan of which it is a part requires, as a condition of participation in the plan, that an employee complete a period of service with the employer or employers maintaining the plan extending beyond the later of the following dates—

"(A) the date on which the employee attains 25 years of age; or

"(B) the date on which he completes 1 year of service.

In the case of any plan which provides that after 3 years of service each participant has a right to 100 percent of his accrued benefit under the plan which is nonforfeitable (within the meaning of section 411) at the time such benefit accrues, subparagraph (B) shall be applied by substituting '3 years of service' for '1 year of service'.

"(2) MAXIMUM AGE CONDITIONS.—A trust shall not constitute a qualified trust under section 401 (a) if the plan of which it is a part excludes from participation (on the basis of age) employees who have attained a specified age, unless the plan—

"(A) is a defined benefit plan, and

"(B) such employees begin employment with the employer after they have attained a specified age which is not more than 5 years before the normal retirement age under the plan.

"(3) DEFINITION OF YEAR OF SERVICE.—

"(A) DETERMINATION UNDER REGULATIONS.—For purposes of paragraph (1), the term 'year of service' means a period of service determined under regulations prescribed by the Secretary or his delegate which provide for the calcula-

tion of such period on any reasonable and consistent basis.

"(B) Reasonable basis.—For purposes of subparagraph (A), the calculation of any period of service shall not be treated as made on a reasonable basis—

"(i) if the average period of service required for participation in the plan (determined as if one employee commenced his service on each day) is more than 12 months, or

"(ii) if any employee who has completed more than 17 months of continuous service is excluded from participation in the plan by such calculation.

"(C) Additional requirements with respect to seasonal employment.—For purposes of subparagraph (A), the calculation of any period of service shall not be treated as made on a reasonable basis in the case of a seasonal employee whose customary employment is for at least 5 months in a 12-month period, if his period of service is treated as less than the period of service he would have had if his customary employment had been nonseasonal.

"(D) Substantially different work pe-

RIODS.—The regulations prescribed under this paragraph shall take into account the customary working period (as expressed in hours, weeks, months, or years) in any industry where, by the nature of the employment, such period differs substantially from the comparable work period in industry generally.

"(4) BREAKS IN SERVICE.—

"(A) SHORTER BREAKS IN SERVICE.—For purposes of paragraph (3) (A), in the case of any employee who has a break in his service with the employer for a continuous period of not less than 1 year, the calculation of his period of service shall not be treated as not made on a reasonable basis merely because, under the plan, service performed by such employee is not taken into account until he has completed a continuous period of service (not in excess of 1 year) after his return.

"(B) EMPLOYEES 50-PERCENT VESTED.—For purposes of paragraph (3) (A), except as otherwise provided in subparagraph (A), in the case of any employee who has a break in his service with the employer and who, before such break, had a nonforfeitable right to 50 percent or more of his accrued benefit derived from employer contributions, the calculation of his period of service shall not be treated as made on a reasonable basis if service performed

by such employee before the end of such break in service is not taken into account in calculating his period of service.

"(C) 4 CONSECUTIVE YEARS OF SERVICE.—For purposes of paragraph (3)(A), except as otherwise provided in subparagraphs (A) and (D), in the case of any employee who has a break in his service with the employer the calculation of his period of service shall not be treated as made on a reasonable basis if such employee completed 4 consecutive years of service before such break and all service before such break is not taken into account.

"(D) 6-YEAR BREAK IN SERVICE.—For purposes of paragraph (3)(A), except as otherwise provided in subparagraph (B), in the case of any employee who has a break in his service with the employer for a continuous period of not less than 6 years, the calculation of his period of service shall not be treated as not made on a reasonable basis merely because, under the plan, service performed by such employee before the end of such break in service is not taken into account.

"(5) APPROVAL OF CERTAIN REGULATIONS.—Any regulations relating to the determination of a year of service (including regulations relating to breaks in

service) shall be effective with respect to plan years beginning after December 31, 1975, only if approved by the Secretary of Labor.

"(b) ELIGIBILITY.—

"(1) IN GENERAL.—A trust shall not constitute a qualified trust under section 401 (a) unless the trust, or two or more trusts, or the trust or trusts and annuity plan or plans are designated by the employer as constituting parts of a plan intended to qualify under section 401 (a) which benefits either—

"(A) 70 percent or more of all employees, or 80 percent or more of all the employees who are eligible to benefit under the plan if 70 percent or more of all the employees are eligible to benefit under the plan, excluding in each case employees who have not satisfied the age and service requirements, if any, prescribed by the plan as a condition of participation, or

"(B) such employees as qualify under a classification set up by the employer and found by the Secretary or his delegate not to be discriminatory in favor of employees who are officers, shareholders, or highly compensated.

"(2) EXCLUSION OF CERTAIN EMPLOYEES.—For

purposes of paragraph (1), there shall be excluded from consideration—

"(A) employees not included in the plan who are included in a unit of employees covered by an agreement which the Secretary or his delegate finds to be a collective bargaining agreement between employee representatives and one or more employers, if there is evidence that retirement benefits were the subject of good faith bargaining between such employee representatives and such employer or employers,

"(B) in the case of a trust established or maintained pursuant to an agreement which the Secretary or his delegate finds to be a collective-bargaining agreement between air pilots represented in accordance with title II of the Railway Labor Act and one or more employers, all employees not covered by such agreement, and

"(C) employees not included in the plan who are nonresident aliens and who receive no earned income (within the meaning of section 911(b)) from the employer which constitutes income from sources within the United States (within the meaning of section 861(a)(3)).

"(c) EXCLUSION OF GOVERNMENTAL PLANS AND CERTAIN CHURCH PLANS.—This section shall not apply to—

"(1) a governmental plan (within the meaning of section 414 (d)) which meets the requirements of section 401 (a) (3) as in effect on the day before the date of the enactment of this section, and

"(2) a church plan (within the meaning of section 414 (e))—

"(A) which meets the requirements of section 401 (a) (3) (and, if applicable, section 406 (b) (1) or 407 (b) (1)) as in effect on the day before the date of the enactment of this section, and

"(B) with respect to which the election provided by subsection (d) has not been made.

"(d) ELECTION BY CHURCH TO HAVE PARTICIPATION, VESTING, FUNDING, AND FORM OF BENEFIT PROVISIONS APPLY.—

"(1) IN GENERAL.—If the church or convention or association of churches which maintains any church plan makes an election under this subsection (in such form and manner, and with such official, as may be prescribed by regulations), then the provisions of this title relating to participation, vesting, funding, and form of benefit (as in effect from time to time) shall apply to

such church plan as if such provisions did not contain an exclusion for church plans.

"(2) ELECTION IRREVOCABLE.—An election under this subsection with respect to any church plan shall be binding with respect to such plan, and, once made, shall be irrevocable."

SEC. 1012. MINIMUM VESTING STANDARDS.

(a) IN GENERAL.—Subpart B of part I of subchapter D of chapter 1 is amended by adding after section 410 the following new section:

"SEC. 411. MINIMUM VESTING STANDARDS.

"(a) GENERAL RULE.—Except as provided in subsections (d) and (e), a trust shall not constitute a qualified trust under section 401(a) unless the plan of which such trust is a part satisfies the requirements of paragraphs (1) and (2) of this subsection and the requirements of paragraph (2) of subsection (b), and in the case of a defined benefit plan, also satisfies the requirements of paragraph (1) of subsection (b).

"(1) EMPLOYEE CONTRIBUTIONS.—A plan satisfies the requirements of this paragraph if, under the plan, an employee's rights in his accrued benefit derived from his own contributions are nonforfeitable.

"(2) EMPLOYER CONTRIBUTIONS.—A plan satis-

fies the requirements of this paragraph if it satisfies the requirements of subparagraph (A), (B), or (C).

"(A) 10-YEAR VESTING.—A plan satisfies the requirements of this subparagraph if, under the plan, an employee who has at least 10 years of service has a nonforfeitable right to 100 percent of his accrued benefit derived from employer contributions.

"(B) 5- TO 15-YEAR VESTING.—A plan satisfies the requirements of this subparagraph if, under the plan, an employee who has at least 5 years of service has a nonforfeitable right to a percentage of his accrued benefit derived from employer contributions. The percentage shall not be less than the percentage determined under the following table:

"Years of service:	Nonforfeitable percentage
5	25
6	30
7	35
8	40
9	45
10	50
11	60
12	70
13	80
14	90
15 or more	100

"(C) RULE OF 45.—A plan satisfies the requirements of this subparagraph if, under the plan—

"(i) in the case of an employee who is an active participant, who has at least 5 years of service, and with respect to whom the sum of

his age and years of service equals or exceeds 45, the employee has a nonforfeitable right to at least 50 percent of his accrued benefit derived from employer contributions, and

"(ii) for each year of service after an employee first satisfies the requirements of clause (i), the nonforfeitable percentage of his accrued benefit so derived is not less than the percentage determined under the following table:

"Additional years of service:	Nonforfeitable percentage
1	60
2	70
3	80
4	90
5	100

"(D) TRANSITIONAL PERCENTAGES.—In the case of a plan in existence on December 31, 1973, for the first 5 plan years of the plan to which this section applies, in lieu of the nonforfeitable percentages set forth in subparagraph (A), (B), or (C), as the case may be, the nonforfeitable percentage shall be the following percentage of the applicable nonforfeitable percentage determined under such subparagraph:

"Plan year to which this section applies:	Percentage of applicable nonforfeitable percentage determined under subparagraph (A), (B), or (C)
1	50
2	60
3	70
4	80
5	90

"(E) NONFORFEITABLE.—For purposes of this paragraph, a right to an accrued benefit derived from employer contributions shall not be treated as forfeitable merely because the plan provides that it is not payable where the participant dies, or that payment of benefits is suspended during periods when the participant has resumed employment with the employer (or, in the case of a multiemployer plan, has resumed employment in the industry) or that plan amendments may be given retroactive application as provided in section 412(c)(8).

"(3) DETERMINATION OF NONFORFEITABLE PERCENTAGE.—In computing the period of service under the plan for purposes of determining the nonforfeitable percentage under paragraph (2), an employee's entire service with the employer or employers maintaining the plan shall be taken into account, except that the following may be disregarded:

"(A) service before age 25;

"(B) service during a period for which the employee declined to contribute to a plan requiring employee contributions;

"(C) service with an employer during any period for which the employer did not maintain the plan;

"(D) seasonal service not taken into account for purposes of section 410;

"(E) service broken by periods of suspension of employment, if the rules governing such breaks in service are permissible under section 410(a)(4); and

"(F) service before January 1, 1969, unless the employee has had at least 5 years of service after December 31, 1968.

"(4) YEAR OF SERVICE.—For purposes of this subsection, the term 'year of service' means a period of service determined under regulations prescribed by the Secretary or his delegate which provide for the calculation of such period on any reasonable and consistent basis. The regulations prescribed under this paragraph shall meet the requirements of paragraphs (3) and (4) of section 410(a) and shall be consistent with the regulations prescribed for purposes of such paragraphs.

"(5) ACCRUED BENEFIT.—

"(A) IN GENERAL.—For purposes of this section, the term 'accrued benefit' means—

"(i) in the case of a defined benefit plan, the employee's accrued benefit determined under the plan and, except as provided in subsection (c)(3), expressed in the form of an

annual benefit commencing at normal retirement age, or

"(ii) in the case of a plan which is not a defined benefit plan, the balance of the employee's account.

"(B) EFFECT OF CERTAIN DISTRIBUTIONS.—Notwithstanding paragraph (3), for purposes of determining the employee's accrued benefit under the plan, the plan may disregard service performed by the employee with respect to which he has received (i) a distribution of the present value of his entire nonforfeitable benefit if such distribution was less than $1,750, or (ii) a distribution of the present value of his nonforfeitable benefit attributable to such service which he elected to receive. Clause (i) of the first sentence of this subparagraph shall apply only if such distribution was made on termination of the employee's participation in the plan. Clause (ii) of the first sentence of this subparagraph shall apply only if such distribution was made on termination of the employee's participation in the plan or under such other circumstances as may be provided under regulations prescribed by the Secretary or his delegate.

"(6) NORMAL RETIREMENT AGE.—For purposes

of this section, the term 'normal retirement age' means the earlier of—

"(A) the time a plan participant attains normal retirement age under the plan, or

"(B) the later of—

"(i) the time a plan participant attains age 65, or

"(ii) the 10th anniversary of the time a plan participant commenced participation in the plan.

"(7) SPECIFICATION OF VESTING SCHEDULE.—A plan shall not satisfy the requirements of paragraph (2) unless the plan specifies whether the vesting schedule specified in subparagraph (A), (B), or (C) of paragraph (2) shall be the applicable minimum schedule for purposes of such plan.

"(8) CHANGES IN VESTING SCHEDULE.—A plan amendment changing any vesting schedule under the plan shall be treated as not satisfying the requirements of paragraph (2) if the nonforfeitable percentage of the accrued benefit derived from employer contributions (determined for any year of service) of any employee who is a participant in the plan on the date such amendment is adopted, or on the date such amendment becomes effective, is less than such nonforfeitable percentage computed under the plan without regard to such amendment.

"(b) ACCRUED BENEFIT REQUIREMENTS.—

"(1) GENERAL RULES.—

"(A) 3-PERCENT METHOD.—A defined benefit plan satisfies the requirements of this paragraph if the annual rate at which any participant accrues retirement benefits under the plan for any year of participation before the end of $33\frac{1}{3}$ years of participation is not less than 3 percent of the maximum benefit to which such participant would be entitled if he commenced participation at the earliest possible entry age under the plan and served continuously until the earlier of age 65 or the normal retirement age specified under the plan. In the case of a plan providing retirement benefits based on compensation during any period, the maximum benefit to which a participant would be entitled shall be determined as if he continued to earn annually the average rate of compensation which he earned during consecutive years of service, not in excess of 10, for which his compensation was the highest. For purposes of this subparagraph, social security benefits and all other relevant factors used to compute benefits shall be treated as remaining constant as of the current year for all years after such current year.

"(B) $133\frac{1}{3}$ PERCENT RULE.—A defined benefit

plan satisfies the requirements of this paragraph unless under the plan the annual rate at which any participant can accrue the retirement benefits payable at normal retirement age under the plan for any plan year is more than $133\frac{1}{3}$ percent of the annual rate at which he can accrue benefits for any other plan year. For purposes of this subparagraph—

"(i) in testing the annual rate of accrual for any plan year against the annual rate of accrual for any prior plan year, the plan may provide that accruals for any prior period before the 11th year of service shall not be taken into account, and

"(ii) compensation, social security benefits, and all other relevant factors used to compute benefits shall be treated as remaining constant as of the current year for all years after the current year.

"(C) CERTAIN INSURED DEFINED BENEFIT PLANS.—Notwithstanding subparagraphs (A) and (B), a defined benefit plan satisfies the requirements of this paragraph if such plan—

"(i) is funded exclusively by the purchase of individual insurance contracts, and

"(ii) satisfies the requirements of para-

graphs (2) and (3) of section 412 (f) (relating to certain insurance contract plans).

but only if an employee's accrued benefit as of any applicable date is not less than the cash surrender value his insurance contracts would have on such applicable date if the requirements of paragraphs (4), (5), and (6) of section 412 (f) were satisfied.

"(2) SEPARATE ACCOUNTING REQUIRED IN CERTAIN CASES.—A plan satisfies the requirements of this paragraph if—

"(A) in the case of a defined benefit plan, the plan requires separate accounting for the portion of each employee's accrued benefit derived from any voluntary employee contributions permitted under the plan; and

"(B) in the case of any plan which is not a defined benefit plan, the plan requires separate accounting for each employee's accrued benefit.

"(3) YEAR OF SERVICE.—For purposes of determining an employee's accrued benefit, the term 'year of service' means a period of service as determined under regulations prescribed by the Secretary or his delegate which provide for the calculation of such period on any reasonable and consistent basis. Any such regulations

shall be effective with respect to plan years beginning after December 31, 1975, only if approved by the Secretary of Labor.

"(c) ALLOCATION OF ACCRUED BENEFITS BETWEEN EMPLOYER AND EMPLOYEE CONTRIBUTIONS.—

"(1) ACCRUED BENEFIT DERIVED FROM EMPLOYER CONTRIBUTIONS.—For purposes of this section, an employee's accrued benefit derived from employer contributions as of any applicable date is the excess of the accrued benefit for such employee as of such applicable date over the accrued benefit derived from contributions made by such employee as of such date.

"(2) ACCRUED BENEFIT DERIVED FROM EMPLOYEE CONTRIBUTIONS.—

"(A) PLANS OTHER THAN DEFINED BENEFIT PLANS.—In the case of a plan other than a defined benefit plan, the accrued benefit derived from contributions made by an employee as of any applicable date is—

"(i) except as provided in clause (ii), the balance of the employee's separate account consisting only of his contributions and the income, expenses, gains, and losses attributable thereto, or

"(ii) if a separate account is not main-

tained with respect to an employee's contributions under such a plan, the amount which bears the same ratio to his total accrued benefit as the total amount of the employee's contributions (less withdrawals) bears to the sum of such contributions and the contributions made on his behalf by the employer (less withdrawals).

"(B) DEFINED BENEFIT PLANS.—

"(i) IN GENERAL.—In the case of a defined benefit plan providing an annual benefit in the form of a single life annuity (without ancillary benefits) commencing at normal retirement age, the accrued benefit derived from contributions made by an employee as of any applicable date is the annual benefit equal to the employee's accumulated contributions multiplied by the appropriate conversion factor.

"(ii) APPROPRIATE CONVERSION FACTOR. For purposes of clause (i), the term 'appropriate conversion factor' means the factor necessary to convert an amount equal to the accumulated contributions to a single life annuity (without ancillary benefits) commencing at normal retirement age and shall be 10 percent

for a normal retirement age of 65 years. For other normal retirement ages the conversion factor shall be determined in accordance with regulations prescribed by the Secretary or his delegate.

"(C) DEFINITION OF ACCUMULATED CONTRIBUTIONS.—For purposes of this subsection, the term 'accumulated contributions' means the total of—

"(i) all mandatory contributions made by the employee,

"(ii) interest (if any) under the plan to the end of the last plan year to which subsection (a) (2) does not apply (by reason of the applicable effective date), and

"(iii) interest on the sum of the amounts determined under clauses (i) and (ii) compounded annually at the rate of 5 percent per annum from the beginning of the first plan year to which subsection (a) (2) applies (by reason of the applicable effective date) to the date upon which the employee would attain normal retirement age.

For purposes of this subparagraph, the term 'mandatory contributions' means amounts contributed to the plan by the employee which are required as a

condition of employment, as a condition of participation in such plan, or as a condition of obtaining benefits under the plan attributable to employer contributions.

"(D) ADJUSTMENTS.—The Secretary or his delegate is authorized to adjust by regulation the conversion factor described in subparagraph (B), the rate of interest described in clause (iii) of subparagraph (C), or both, from time to time as he may deem necessary. The rate of interest shall bear the relationship to 5 percent which the Secretary or his delegate determines to be comparable to the relationship which the long-term money rates and investment yields for the last period of 10 calendar years ending at least 12 months before the beginning of the plan year bear to the long-term money rates and investment yields for the 10-calendar year period 1964 through 1973. No such adjustment shall be effective for a plan year beginning before the expiration of 1 year after such adjustment is determined and published.

"(E) LIMITATION.—The accrued benefit derived from employee contributions shall not exceed the employee's accrued benefit under the plan.

"(3) ACTUARIAL ADJUSTMENT.—For purposes of

this section, in the case of any defined benefit plan, if an employee's accrued benefit is to be determined as an amount other than an annual benefit commencing at normal retirement age, or if the accrued benefit derived from contributions made by an employee is to be determined with respect to a benefit other than an annual benefit in the form of a single life annuity (without ancillary benefits) commencing at normal retirement age, the employee's accrued benefit, or the accrued benefits derived from contributions made by an employee, as the case may be, shall be the actuarial equivalent of such benefit or amount determined under paragraph (1) or (2).

"(d) SPECIAL RULES.—

"(1) COORDINATION WITH SECTION 401(a) (4).—A plan which satisfies the requirements of this section shall be treated as satisfying any vesting requirements resulting from the application of section 401 (a) (4) unless—

"(A) there has been a pattern of abuse under the plan (such as a firing of employees before their accrued benefits vest), or

"(B) there have been, or there is reason to believe there will be, an accrual of benefits or forfeitures tending to discriminate in favor of em-

ployees who are officers, shareholders, or highly compensated.

"(2) PROHIBITED DISCRIMINATION.—Subsection (a) shall not apply to benefits which may not be provided for designated employees in the event of early termination of the plan under provisions of the plan adopted pursuant to regulations prescribed by the Secretary or his delegate to preclude the discrimination prohibited by section 401 (a) (4).

"(3) TERMINATION OR PARTIAL TERMINATION; DISCONTINUANCE OF CONTRIBUTIONS.—Notwithstanding the provisions of subsection (a), a trust shall not constitute a qualified trust under section 401 (a) unless the plan of which such trust is a part provides that—

"(A) upon its termination or partial termination, or

"(B) in the case of a plan to which section 412 does not apply, upon complete discontinuance of contributions under the plan,

the rights of all affected employees to benefits accrued to the date of such termination, partial termination, or discontinuance, to the extent funded as of such date, or the amounts credited to the employees' accounts, are nonforfeitable. This paragraph shall not apply to benefits or contributions which, under provisions of the plan

adopted pursuant to regulations prescribed by the Secretary or his delegate to preclude the discrimination prohibited by section 401 (a) (4), may not be used for designated employees in the event of early termination of the plan.

"(4) CLASS YEAR PLANS.—The requirements of subsection (a) (2) shall be deemed to be satisfied in the case of a class year plan if such plan provides that 100 percent of each employee's right to or derived from the contributions of the employer on his behalf with respect to any plan year are nonforfeitable not later than the end of the 5th plan year following the plan year for which such contributions were made (within the meaning of section 404 (a) (6)). For purposes of this section, the term 'class year plan' means a profit-sharing or stock bonus plan which provides for the separate nonforfeitability of employees' rights to or derived from the contributions for each plan year.

"(5) TREATMENT OF VOLUNTARY EMPLOYEE CONTRIBUTIONS.—In the case of a defined benefit plan which permits voluntary employee contributions, the portion of an employee's accrued benefit derived from such contributions shall be treated as an accrued benefit derived from employee contributions under a plan other than a defined benefit plan.

"(e) Exclusion of Certain Plans.—This section shall not apply to—

"(1) a governmental plan, if the plan meets any vesting requirements resulting from the application of section 401 (a) (4) as in effect on the day before the date of the enactment of this section,

"(2) a church plan—

"(A) which meets any vesting requirements resulting from the application of section 401 (a) (4) as in effect on the day before the date of the enactment of this section, and

"(B) with respect to which the election provided by section 410 (d) has not been made, and

"(3) a plan which has not, at any time after the date of the enactment of this section, provided for employer contributions.

"(f) Recordkeeping Requirements.—

"(1) Single employer plan.—Except as provided by paragraph (2), every employer shall, in accordance with regulations prescribed by the Secretary or his delegate, maintain records with respect to each of his employees sufficient to determine the benefits due or which may become due to such employees.

"(2) More than one employer.—If more than one employer adopts a plan, each such employer shall, in

accordance with regulations prescribed by the Secretary or his delegate, furnish to the plan administrator the information necessary for the administrator to maintain the records required by paragraph (1). Such administrator shall maintain the records required by paragraph (1).

"(g) CROSS REFERENCE.—

"For penalty for failure to furnish the information or maintain the records required under this section, see section 6690."

(b) PENALTY FOR FAILURE TO FURNISH INFORMATION.—Subchapter B of chapter 68 (relating to assessable penalties) is amended by adding at the end thereof the following new section:

"SEC. 6690. FAILURE TO FURNISH INFORMATION OR MAINTAIN RECORDS.

"(a) CIVIL PENALTY.—If any person who is required, under section 411(f), to furnish information or maintain records for any plan year fails to comply with such requirement, he shall pay a penalty of $10 for each employee with respect to whom such failure occurs, unless it is shown that such failure is due to reasonable cause.

"(b) DEFICIENCY PROCEDURES NOT TO APPLY.—Subchapter B of chapter 63 (relating to deficiency procedures for income, estate, gift, and certain excise taxes) shall

not apply to the assessment or collection of any penalty imposed by subsection (a)."

(c) Comparability of Plans.—Section 401 (a) (relating to requirements for qualification) is amended by adding at the end of paragraph (5) the following: "For purposes of determining whether two or more plans of an employer satisfy the requirements of paragraph (4) when considered as a single plan, if the amount of contributions on behalf of the employees allowed as a deduction under section 404 for the taxable year with respect to such plans, taken together, bears a uniform relationship to the total compensation, or the basic or regular rate of compensation, of such employees, the plans shall not be considered discriminatory merely because the rights of employees to, or derived from, the employer contributions under the separate plans do not become nonforfeitable at the same rate. For purposes of determining whether two or more plans of an employer satisfy the requirements of paragraph (4) when considered as a single plan, if the employees' rights to benefits under the separate plans do not become nonforfeitable at the same rate, but the levels of benefits provided by the separate plans satisfy the requirements of regulations prescribed by the Secretary or his delegate to take account of the differences in such rates, the plans shall not be considered discriminatory merely because of the differences in such rates."

SEC. 1013. MINIMUM FUNDING STANDARDS.

(a) In General.—Subpart B of part I of subchapter D of chapter 1 is amended by adding after section 411 the following new section:

"SEC. 412. MINIMUM FUNDING STANDARDS.

"(a) General Rule.—Except as provided in subsection (e), this section applies to a plan if, for any plan year beginning on or after the effective date of this section for such plan—

"(1) such plan included a trust which qualified (or was determined by the Secretary or his delegate to have qualified) under section 401 (a), or

"(2) such plan satisfied (or was determined by the Secretary or his delegate to have satisfied) the requirements of section 404 (a) (2) or 405 (a).

A plan to which this section applies shall have satisfied the minimum funding standard for such plan for a plan year at the end of which the plan does not have an accumulated funding deficiency. For purposes of this section and section 4971, the term 'accumulated funding deficiency' means for any plan the excess of the total charges to the funding standard account for all plan years (beginning with the first plan year to which this section applies) over the total credits to such account for such years.

"(b) Funding Standard Account.—

"(1) ACCOUNT REQUIRED.—Each plan to which this section applies shall establish and maintain a funding standard account. Such account shall be credited and charged solely as provided in this section.

"(2) CHARGES TO ACCOUNT.—For a plan year, the funding standard account shall be charged with the sum of—

"(A) the normal cost of the plan for the plan year,

"(B) the amounts necessary to amortize in equal annual installments (until fully amortized)—

"(i) in the case of a plan in existence on January 1, 1974, the unfunded past service liability under the plan on the first day of the first plan year to which this section applies, over a period of 40 plan years,

"(ii) in the case of a plan which comes into existence after January 1, 1974, the unfunded past service liability under the plan on the first day of the first plan year to which this section applies, over a period of 30 plan years (40 plan years in the case of multiemployer plan),

"(iii) separately, with respect to each plan year, the net increase (if any) in unfunded

past service liability under the plan arising from plan amendments adopted in such year, over a period of 30 plan years (40 plan years in the case of a multiemployer plan), and

"(iv) separately, with respect to each plan year, the net experience loss (if any) under the plan, over a period of 15 plan years (20 plan years in the case of a multiemployer plan),

"(C) the excess (if any) for such plan year of—

"(i) the annual amount which would be necessary to amortize in equal annual installments from such year over a period of 20 years the excess (if any) of the present value of all nonforfeitable benefits (computed using appropriate mortality and interest assumptions) over the value of the plan's assets, over

"(ii) the excess (if any) of the sum of the amounts computed under subparagraphs (A) and (B) of paragraph (2) over the amount computed under paragraph (3)(B), and

"(D) the amount necessary to amortize each waived funding deficiency (within the meaning of subsection (d)(3)) for each prior plan year in

equal annual installments (until fully amortized) over a period of 15 plan years.

"(3) CREDITS TO ACCOUNT.—For a plan year, the funding standard account shall be credited with the sum of—

"(A) the amount considered contributed by the employer to or under the plan (within the meaning of section 404 (a) (6)) for the plan year,

"(B) the amount necessary to amortize in equal annual installments (until fully amortized)—

"(i) separately, with respect to each plan year, the net decrease (if any) in unfunded past service liability under the plan arising from plan amendments adopted in such year, over a period of 30 plan years (40 plan years in the case of a multiemployer plan), and

"(ii) separately, with respect to each plan year, the net experience gain (if any) under the plan, over a period of 15 plan years (20 plan years in the case of a multiemployer plan), and

"(C) the amount of the waived funding deficiency (within the meaning of subsection (d) (3)) for the plan year.

"(4) COMBINING AND OFFSETTING AMOUNTS TO

BE AMORTIZED.—Under regulations prescribed by the Secretary or his delegate, amounts required to be amortized under paragraph (2) or paragraph (3), as the case may be—

"(A) may be combined into one amount under such paragraph to be amortized over a period determined on the basis of the remaining amortization period for all items entering into such combined amount, and

"(B) may be offset against amounts required to be amortized under the other such paragraph, with the resulting amount to be amortized over a period determined on the basis of the remaining amortization periods for all items entering into whichever of the two amounts being offset is the greater.

"(5) INTEREST.—The funding standard account (and items therein) shall be charged or credited (as determined under regulations prescribed by the Secretary or his delegate) with interest at the appropriate rate consistent with the rate or rates of interest used under the plan to determine costs.

"(c) SPECIAL RULES.—

"(1) DETERMINATIONS TO BE MADE UNDER FUNDING METHOD.—For purposes of this section, normal

costs, accrued liability, past service liabilities, and experience gains and losses shall be determined under the funding method used to determine costs under the plan.

"(2) VALUATION OF ASSETS.—

"(A) IN GENERAL.—For purposes of this section, the value of the plan's assets shall be determined on the basis of any reasonable actuarial method of valuation which takes into account fair market value and which is permitted under regulations prescribed by the Secretary or his delegate. Any such regulations which apply to plan years beginning after December 31, 1975, shall be effective only if approved by the Secretary of Labor.

"(B) ELECTION WITH RESPECT TO BONDS.—The value of a bond or other evidence of indebtedness which is not in default as to principal or interest may, at the election of the plan administrator, be determined on an amortized basis running from initial cost at purchase to par value at maturity or earliest call date. Any election under this subparagraph shall be made at such time and in such manner as the Secretary or his delegate shall by regulations provide, shall apply to all such evidences of indebtedness, and may be revoked only with the consent of the Secretary or his delegate.

"(3) ACTUARIAL ASSUMPTIONS MUST BE REASONABLE.—For purposes of this section, all costs, liabilities, rates of interest, and other factors under the plan shall be determined on the basis of actuarial assumptions which, in the aggregate, are reasonable.

"(4) TREATMENT OF CERTAIN CHANGES AS EXPERIENCE GAIN OR LOSS.—For purposes of this section, if—

"(A) a change in the funding method or the actuarial assumptions used under the plan,

"(B) a change in benefits under the Social Security Act or in other retirement benefits created under Federal or State law, or

"(C) a change in the definition of the term 'wages' under section 3121,

results in an increase or decrease in accrued liability under a plan, such increase or decrease shall be treated as an experience loss or gain.

"(5) CHANGE IN FUNDING METHOD OR IN PLAN YEAR REQUIRES APPROVAL.—If the funding method for a plan is changed, the new funding method shall become the funding method used to determine costs and liabilities under the plan only if the change is approved by the Secretary or his delegate. If the plan year for a plan is changed, the new plan year shall become the

plan year for the plan only if the change is approved by the Secretary or his delegate.

"(6) FULL FUNDING.—If, as of the close of a plan year, a plan would (but for the application of this paragraph) have an accumulated funding deficiency in excess of the full funding limitation—

"(A) the funding standard account shall be credited with the amount of such excess, and

"(B) all amounts described in paragraphs (2) (B) and (D) and (3)(B) of subsection (b) which are required to be amortized shall be considered fully amortized for purposes of such paragraphs.

"(7) FULL FUNDING LIMITATION.—For purposes of paragraph (6), the term 'full funding limitation' means the excess (if any) of—

"(A) the accrued liability (including normal cost) under the plan (determined under the entry age normal funding method if such accrued liability cannot be directly calculated under the funding method used for the plan), over

"(B) the lesser of the fair market value of the plan's assets or the value of such assets determined under paragraph (2).

"(8) CERTAIN RETROACTIVE PLAN AMENDMENTS.—

"(A) AMENDMENTS WITHOUT APPROVAL OF SECRETARY OF LABOR.—For purposes of this section, any amendment applying to a plan year which—

"(i) is adopted after the close of such plan year but no later than the time prescribed by law (including extensions) for filing the return of the employer for the taxable year with which or within which the plan year ends (or, in the case of a multiemployer plan, no later than 2 years after the close of such plan year), and

"(ii) does not reduce the accrued benefit of any participant determined as of the end of the first plan year to which the amendment applies

shall, at the election of the plan administrator, be deemed to have been made on the first day of such plan year.

"(B) AMENDMENTS WITH APPROVAL OF SECRETARY OF LABOR.—For purposes of this section, any amendment adopted after the close of the plan year which reduces benefits, whether or not other-

wise nonforfeitable (determined as of the end of the preceding plan year) shall, except for purposes of section 4971 (a) (relating to initial 5 percent tax on failure to meet minimum funding standards), be deemed to have been made on the first day of the first plan year to which such amendment applies if the Secretary of Labor approves such retroactive application of such amendment. The Secretary of Labor shall approve such application on his own motion (or having received the petition of the plan administrator) after giving interested persons an opportunity to be heard and after determining that—

"(i) such amendment affects the plan only to such extent (and for such limited period of time) as is necessary or appropriate to carry out the purposes of the Employee Benefit Security Act of 1974 and to provide adequate protection to the participants and beneficiaries in the plan.

"(ii) but for such amendment, there would result a substantial risk to the voluntary continuation of the plan or a substantial curtailment of pension benefit levels or the levels of employee compensation, and

"(iii) failure to make such amendment

would be adverse to the interests of plan participants in the aggregate.

No retroactive amendment may be approved under this subparagraph unless the Secretary of Labor is satisfied that all plan participants and other interested persons (as determined under regulations prescribed by the Secretary of Labor) have received adequate prior notice from the plan administrator of any hearing to be held under this subparagraph. The Secretary of Labor shall notify the Secretary of the Treasury of any such hearing.

"(9) 3-YEAR VALUATION.—For purposes of this section, a determination of experience gains and losses and a valuation of the plan's liability shall be made not less frequently than once every 3 years, except that such determination shall be made more frequently to the extent required in particular cases under regulations prescribed by the Secretary or his delegate. Any such regulations which apply to plan years beginning after December 31, 1975, shall be effective only if approved by the Secretary of Labor.

"(d) VARIANCE FROM MINIMUM FUNDING STANDARD; EXTENSION OF AMORTIZATION PERIODS FOR MULTIEMPLOYER PLANS.—

"(1) WAIVER IN CASE OF SUBSTANTIAL BUSINESS HARDSHIP.—If an employer is unable to satisfy the minimum funding standard for a plan year without substantial business hardship and if application of the standard would be adverse to the interests of plan participants in the aggregate, the Secretary or his delegate may waive the requirements of subsection (a) for such year with respect to all or any portion of the minimum funding standard other than the portion thereof determined under subsection (b)(2)(D). The Secretary or his delegate shall not waive the minimum funding standard with respect to a plan for more than 5 of any 15 consecutive plan years.

"(2) DETERMINATION OF SUBSTANTIAL BUSINESS HARDSHIP.—For purposes of this section, the factors taken into account in determining substantial business hardship shall include (but shall not be limited to) whether or not—

"(A) the employer is operating at an economic loss,

"(B) there is substantial unemployment or underemployment in the trade or business and in the industry concerned,

"(C) the sales and profits of the industry concerned are depressed or declining, and

"(D) it is reasonable to expect that the plan will be continued only if the waiver is granted.

"(3) WAIVED FUNDING DEFICIENCY.—For purposes of this section, the term 'waived funding deficiency' means the portion of the minimum funding standard (determined without regard to subsection (b) (3) (C)) for a plan year waived by the Secretary or his delegate and not satisfied by employer contributions.

"(4) EXTENSION OF AMORTIZATION PERIODS FOR MULTIEMPLOYER PLANS.—If 10 percent or more of the number of employers contributing to or under a multiemployer plan demonstrate to the satisfaction of the Secretary of Labor that they would experience substantial business hardship if required to amortize in equal annual installments any unfunded liability (described in any clause of subsection (b) (2) (B)) of such plan over a period of years and if such requirement would be adverse to the interests of plan participants in the aggregate, then the period of years described in such clause shall be extended for such plan for the period of time (not in excess of 10 years) which is certified for this purpose by the Secretary of Labor to the Secretary of the Treasury.

"(5) BENEFITS MAY NOT BE INCREASED DURING WAIVER OR EXTENSION PERIOD.—No amendment of

the plan which increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan shall be adopted if a waiver under paragraph (1), an extension of time under paragraph (4), or an alternate method prescribed under section 1015(b) of the Employee Benefit Security Act of 1974 is in effect with respect to the plan. If a plan is amended in violation of the preceding sentence, any such waiver, extension of time, or alternate method shall not apply to any plan year ending on or after the day on which such amendment is adopted.

"(e) EXCEPTIONS.—Subsection (a) shall not apply to—

"(1) any profit-sharing or stock bonus plan,

"(2) any insurance contract plan described in subsection (f),

"(3) any governmental plan which meets the requirements of section 401(a)(7) as in effect on the day before the date of the enactment of this section,

"(4) any church plan—

"(A) which meets the requirements of section 401(a)(7) as in effect on the day before the date of the enactment of this section, and

"(B) with respect to which the election provided by section 410(d) has not been made, and

"(5) a plan which has not, at any time after the date of the enactment of this section, provided for employer contributions.

"(f) CERTAIN INSURANCE CONTRACT PLANS.—A plan is described in this subsection if—

"(1) the plan is funded exclusively by the purchase of individual insurance contracts,

"(2) such contracts provide for level annual premium payments to be paid extending not later than the retirement age for each individual participating in the plan, and commencing with the date the individual became a participant in the plan (or, in the case of an increase in benefits, commencing at the time such increase becomes effective),

"(3) benefits provided by the plan are equal to the benefits provided under each contract at normal retirement age under the plan and are guaranteed by an insurance carrier (licensed under the laws of a State to do business with the plan) to the extent premiums have been paid,

"(4) premiums payable for the plan year, and all prior plan years under such contracts have been paid before lapse or there is reinstatement of the policy,

"(5) no rights under such contracts have been subject to a security interest at any time during the plan year, and

"(6) no policy loans are outstanding at any time during the plan year."

(b) Excise Tax on Failure To Meet Minimum Funding Standards.—Subtitle D (relating to miscellaneous excise taxes) is amended by adding at the end thereof of the following new chapter:

"CHAPTER 43—QUALIFIED PENSION, ETC., PLANS

"Sec. 4971. Taxes on failure to meet minimum funding standards.

"SEC. 4971. TAXES ON FAILURE TO MEET MINIMUM FUNDING STANDARDS.

"(a) Initial Tax.—For each taxable year of an employer who maintains a plan to which section 412 applies, there is hereby imposed a tax of 5 percent on the amount of the accumulated funding deficiency under the plan, determined as of the end of the plan year ending with or within such taxable year. The tax imposed by this subsection shall be paid by the employer responsible for contributing to or under the plan the amount described in section 412(b)(3)(A).

"(b) Additional Tax.—In any case in which an initial tax is imposed by subsection (a) on an accumulated fund-

ing deficiency and such accumulated funding deficiency is not corrected within the correction period, there is hereby imposed a tax equal to 100 percent of such accumulated funding deficiency to the extent not corrected. The tax imposed by this subsection shall be paid by the employer described in subsection (a).

"(c) DEFINITIONS.—For purposes of this section—

"(1) ACCUMULATED FUNDING DEFICIENCY.—The term 'accumulated funding deficiency' has the meaning given to such term by the last sentence of section 412(a).

"(2) CORRECT.—The term 'correct' means, with respect to an accumulated funding deficiency, the contribution, to or under the plan, of the amount necessary to reduce such accumulated funding deficiency as of the end of a plan year in which such deficiency arose to zero.

"(3) CORRECTION PERIOD.—The term 'correction period' means, with respect to an accumulated funding deficiency, the period beginning with the end of a plan year in which there is an accumulated funding deficiency and ending 90 days after the date of mailing of a notice of deficiency under section 6212 with respect to the tax imposed by subsection (a), extended—

"(A) by any period in which a deficiency cannot be assessed under section 6213 (a), and

"(B) by any other period which the Secretary or his delegate determines is reasonable and necessary to permit a reduction of the accumulated funding deficiency to zero under this section.

"(d) CROSS REFERENCE.—

"For disallowance of deduction for taxes paid under this section, see section 275."

(c) AMENDMENTS TO SECTION 404.—

(1) Paragraph (1) of section 404 (a) (relating to deduction for employer contributions to pension trusts) is amended to read as follows:

"(1) PENSION TRUSTS.—In the taxable year when paid, if the contributions are paid into a pension trust, and if such taxable year ends within or with a taxable year of the trust for which the trust is exempt under section 501 (a), in an amount determined as follows:

"(A) the amount necessary to satisfy the minimum funding standard provided by section 412 (a) for plan years ending within or with such taxable year (or for any prior plan year), if such amount is greater than the amount determined under subparagraph (B) or (C) (whichever is applicable with respect to the plan),

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"(B) the amount necessary to provide with respect to all of the employees under the trust the remaining unfunded cost of their past and current service credits distributed as a level amount, or a level percentage of compensation, over the remaining future service of each such employee, as determined under regulations prescribed by the Secretary or his delegate, but if such remaining unfunded cost with respect to any 3 individuals is more than 50 percent of such remaining unfunded cost, the amount of such unfunded cost attributable to such individuals shall be distributed over a period of at least 5 taxable years, or

"(C) an amount equal to the normal cost of the plan, as determined under regulations prescribed by the Secretary or his delegate, plus, if past service or other supplementary pension or annuity credits are provided by the plan, an amount necessary to amortize such credits in equal annual payments (until fully amortized) over 10 years, as determined under regulations prescribed by the Secretary or his delegate.

In determining the amount deductible in such year under the foregoing limitations, the funding method and the

actuarial assumptions shall be those used for such year under section 412, and the maximum amount deductible for such year under the foregoing limitations shall be an amount equal to the full funding limitation for such year determined under section 412. Any amount paid in a taxable year in excess of the amount deductible in such year under the foregoing limitations shall be deductible in the succeeding taxable years in order of time to the extent of the difference between the amount paid and deductible in each such succeeding year and the maximum amount deductible for such year under the foregoing limitations."

(2) Paragraph (6) of section 404 (a) (relating to taxpayers on accrual basis) is amended to read as follows:

"(6) TIME WHEN CONTRIBUTIONS DEEMED MADE.—For purposes of paragraphs (1), (2), and (3), a taxpayer shall be deemed to have made a payment on the last day of the preceding taxable year if the payment is on account of such taxable year and is made not later than the time prescribed by law for filing the return for such taxable year (including extensions thereof)."

(3) Paragraph (7) of section 404 (a) (relating to limit on deductions) is amended to read as follows:

"(7) LIMIT ON DEDUCTIONS.—If amounts are de-

ductible under paragraphs (1) and (3), or (2) and (3), or (1), (2), and (3), in connection with two or more trusts, or one or more trusts and an annuity plan, the total amount deductible in a taxable year under such trusts and plans shall not exceed the greater of 25 percent of the compensation otherwise paid or accrued during the taxable year to the beneficiaries of the trusts or plans, or the amount of contributions made to or under the trusts or plans to the extent such contributions do not exceed the amount of employer contributions necessary to satisfy the minimum funding standard provided by section 412 for the plan year which ends with or within such taxable year (or for any prior plan year). In addition, any amount paid into such trust or under such annuity plans in any taxable year in excess of the amount allowable with respect to such year under the preceding provisions of this paragraph shall be deductible in the succeeding taxable years in order of time, but the amount so deductible under this sentence in any one such succeeding taxable year together with the amount allowable under the first sentence of this paragraph shall not exceed 25 percent of the compensation otherwise paid or accrued during such taxable years to the beneficiaries under the trusts or plans. This paragraph shall not have the effect of reducing the amount otherwise deductible

under paragraphs (1), (2), and (3), if no employee is a beneficiary under more than one trust or a trust and an annuity plan."

SEC. 1014. COLLECTIVELY BARGAINED PLANS.

Subpart B of part I of subchapter D of chapter 1 (relating to special rules) is amended by inserting after section 412 the following new section:

"SEC. 413. COLLECTIVELY BARGAINED PLANS.

"(a) APPLICATION OF SECTION.—This section applies to—

"(1) a plan maintained pursuant to an agreement which the Secretary or his delegate finds to be a collective-bargaining agreement between employee representatives and one or more employers, and

"(2) each trust which is a part of such plan.

"(b) GENERAL RULE.—If this section applies to a plan, notwithstanding any other provision of this title—

"(1) PARTICIPATION.—Section 410 shall be applied as if all employees of each of the employers who are parties to the collective-bargaining agreement and who are subject to the same benefit computation formula under the plan were employed by a single employer.

"(2) DISCRIMINATION, ETC.—Sections 401 (a) (4) and 411 (d) (3) shall be applied as if all participants who are employed by employers who are required to

contribute to or under the plan on the same basis were employed by a single employer.

"(3) EXCLUSIVE BENEFIT. For purposes of section 401 (a), in determining whether the plan of an employer is for the exclusive benefit of his employees and their beneficiaries, all plan participants shall be considered to be his employees.

"(4) VESTING.—Section 411 (other than subsection (d) (3)) shall be applied as if all employers who have been parties to the collective-bargaining agreement constituted a single employer, except that the application of any rules with respect to breaks in services shall be made under regulations prescribed by the Secretary or his delegate.

"(5) PLAN YEAR.—The minimum funding standard provided by section 412 shall be determined as if all participants in the plan were employed by a single employer. For purposes of section 412 (other than for purposes of determining the portion of a liability required to be amortized for a plan year), a plan year shall be considered (A) to begin on the date the collective-bargaining agreement is first effective (treating an agreement to extend a prior agreement as a new agreement) and to end on the expiration date of the agreement determined under such agreement, or (B) to be

such other period as may be determined under regulations prescribed by the Secretary or his delegate.

"(6) LIABILITY FOR FUNDING TAX.—For a plan year the liability under section 4971 of each employer who is a party to the collective bargaining agreement shall be determined, in accordance with regulations prescribed by the Secretary or his delegate—

"(A) first on the basis of their respective delinquencies in meeting required employer contributions under the plan, and

"(B) then on the basis of their respective liabilities for contributions under the plan.

"(7) DEDUCTION LIMITATIONS.—Each applicable limitation provided by section 404 (a) shall be determined for a plan year (within the meaning of paragraph (5)) as if all participants in the plan were employed by a single employer. The amounts contributed to or under the plan by each employer who is a party to the agreement, for the portion of his taxable year which is included within such a plan year, shall be considered not to exceed such a limitation if the anticipated employer contributions for such plan year (determined in a manner consistent with the manner in which actual employer contributions for such plan year are determined) do not exceed such limitation. If such antici-

pated contributions exceed such a limitation, the portion of each such employer's contributions which is not deductible under section 404 shall be determined in accordance with regulations prescribed by the Secretary or his delegate."

SEC. 1015. DEFINITIONS AND SPECIAL RULES.

(a) In General.—Subpart B of part I of subchapter D of chapter 1 is amended by inserting after section 413 the following new section:

"SEC. 414. DEFINITIONS AND SPECIAL RULES.

"(a) Service for Predecessor Employer.—For purposes of this part, service for a predecessor of the employer shall, to the extent provided in regulations prescribed by the Secretary or his delegate, be treated as service for the employer.

"(b) Employees of Controlled Group of Corporations.—For purposes of sections 401, 410, 411, and 415, all employees of all corporations which are members of a controlled group of corporations (within the meaning of section 1563 (a), determined without regard to section 1563 (a) (4) and (e) (3) (C)) shall be treated as employed by a single employer. With respect to a plan adopted by more than one such corporation, the minimum funding standard of section 412, the tax imposed by section 4971, and the applicable limitations provided by section 404 (a) shall be

determined as if all such employers were a single employer, and allocated to each employer in accordance with regulations prescribed by the Secretary or his delegate.

"(c) EMPLOYEES OF PARTNERSHIPS, PROPRIETORSHIPS, ETC., WHICH ARE UNDER COMMON CONTROL.—For purposes of sections 401, 410, 411, and 415, under regulations prescribed by the Secretary or his delegate, all employees of trades or businesses (whether or not incorporated) which are under common control shall be treated as employed by a single employer. The regulations prescribed under this subsection shall be based on principles similar to the principles which apply in the case of subsection (b).

"(d) GOVERNMENTAL PLAN.—For purposes of this part, the term 'governmental plan' means a plan established and maintained for its employees by the Government of the United States, by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing. The term 'governmental plan' also includes any plan to which the Railroad Retirement Act of 1935 or 1937 applies.

"(e) CHURCH PLAN.—

"(1) IN GENERAL.—Except as provided in paragraph (2), for purposes of this part the term 'church plan' means a plan established and maintained by a

church or by a convention or association of churches which is exempt from tax under section 501.

"(2) CERTAIN UNRELATED BUSINESS OR MULTI-EMPLOYER PLANS.—The term 'church plan' does not include a plan—

"(A) which is established and maintained primarily for the benefit of employees (or their beneficiaries) of such church or convention or association of churches who are employed in connection with one or more unrelated trades or businesses (within the meaning of section 513), or

"(B) which is a multiemployer plan, if one or more of the employers in the plan is not a church (or a convention or association of churches) which is exempt from tax under section 501.

"(3) CERTAIN CHURCH AGENCIES NOW UNDER CHURCH PLAN.—For purposes of this subsection, if—

"(A) a plan described in paragraph (1) was in existence on January 1, 1974, and

"(B) such plan on such date covered employees of any organization which is (i) exempt from tax under section 501 and (ii) an agency of the church or convention or association of churches which established and maintained the plan,

then the employees of such agency who are at any time covered by such plan shall be treated as employees whose employer is such church or convention or association of churches, as the case may be.

"(f) MULTIEMPLOYER PLAN.—

"(1) IN GENERAL.—For purposes of this part, the term 'multiemployer plan' means a plan—

"(A) to which more than one employer is required to contribute,

"(B) which is maintained pursuant to a collective bargaining agreement between employee representatives and more than one employer,

"(C) under which the amount of contributions made under the plan for a plan year by each employer making such contributions is less than 50 percent of the aggregate amount of contributions made under the plan for that plan year by all employers making such contributions, and

"(D) which satisfies such other requirements as the Secretary or his delegate may by regulations prescribe.

"(2) SPECIAL RULES.—For purposes of this subsection—

"(A) If a plan is a multiemployer plan within the meaning of paragraph (1) for any plan year,

subparagraph (C) of paragraph (1) shall be applied by substituting '75 percent' for '50 percent' for each subsequent plan year until the first plan year following a plan year in which the plan had one employer who made contributions of 75 percent or more of the aggregate amount of contributions made under the plan for that plan year by all employers making such contributions.

"(B) All corporations which are members of a controlled group of corporations (within the meaning of section 1563(a), determined without regard to section 1563(e)(3)(C)) shall be deemed to be one employer.

"(g) PLAN ADMINISTRATOR.—For purposes of this part, the term 'plan administrator' means—

"(1) the person specifically so designated by the terms of the instrument under which the plan is operated;

"(2) in the absence of a designation referred to in paragraph (1)—

"(A) in the case of a plan maintained by a single employer, such employer,

"(B) in the case of a plan maintained by two or more employers or jointly by one or more employers and one or more employee organizations,

the association, committee, joint board of trustees, or other similar group of representatives of the parties who maintained the plan, or

"(C) in any case to which subparagraph (A) or (B) does not apply, such other person as the Secretary or his delegate may prescribe.

"(h) TAX TREATMENT OF CERTAIN CONTRIBUTIONS.—

"(1) IN GENERAL.—For purposes of this title, any amount contributed—

"(A) to an employees' trust described in section 401 (a), or

"(B) under a plan described in section 403 (a) or 405 (a),

shall not be treated as having been made by the employer if it is designated as an employee contribution.

"(2) DESIGNATION BY UNITS OF GOVERNMENT.—For purposes of paragraph (1), in the case of any plan established by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing, where the contributions of employing units are designated as employee contributions but where any employing unit picks up the contributions, the contributions so picked up shall be treated as employer contributions.

"(i) DEFINED CONTRIBUTION PLAN.—For purposes of this part, the term 'defined contribution plan' means a plan which provides for an individual account for each participant and for benefits based solely on the amount contributed to the participant's account, and any income, expenses, gains and losses, and any forfeitures of accounts of other participants which may be allocated to such participant's account.

"(j) DEFINED BENEFIT PLAN.—For purposes of this part, the term 'defined benefit plan' means any plan which is not a defined contribution plan."

(b) VARIATIONS FROM CERTAIN VESTING AND FUNDING REQUIREMENTS FOR MULTIEMPLOYER PLANS.—In the case of any multiemployer plan (within the meaning of section 414(f) of the Internal Revenue Code of 1954), the Secretary of Labor on his own motion or after having received the petition of a plan administrator may, after giving interested persons an opportunity to be heard, prescribe an alternate method which will satisfy the requirements of subsection (a)(2) of section 411 of the Internal Revenue Code of 1954, subsection (b)(1) of such section 411, paragraphs (2) and (3) of section 412(b) of such Code, or section 412(c)(5) of such Code for such limited period of time as is necessary or appropriate to carry out the purposes of this Act and which will provide adequate protection to the par-

ticipants and beneficiaries in the plan, whenever he finds that the application of such requirements would—

(1) increase the costs of the parties to the plan to such an extent that there would result a substantial risk to the voluntary continuation of the plan or a substantial curtailment of benefit levels or the levels of employees' compensation, or

(2) impose unreasonable administrative burdens with respect to the operation of the plan, having due regard to the particular characteristics of the plan or the type of plan involved,

and where the application of such requirements or discontinuance of the plan would be adverse to the interests of plan participants in the aggregate. No alternate method may be prescribed under this subsection unless the Secretary of Labor is satisfied that all plan participants and other interested persons (as determined under regulations prescribed by the Secretary of Labor) have received adequate prior notice from the plan administrator of any hearing to be held under this subsection. The Secretary of Labor shall notify the Secretary of the Treasury of any such hearing.

SEC. 1016. CONFORMING AND CLERICAL AMENDMENTS.

(a) CONFORMING AMENDMENTS.—

(1) Section 275(a) (relating to denial of deduc-

tion for certain taxes) is amended by adding at the end thereof the following new paragraph:

"(6) Taxes imposed by chapter 42 and chapter 43."

(2) Section 401 (a) (relating to requirements for qualification) is amended—

(A) by striking out paragraph (3) and inserting in lieu thereof:

"(3) if the plan of which such trust is a part satisfies the requirements of section 410 (relating to minimum participation standards); and",

(B) by striking out "paragraph (3) (B) or (4)" in paragraph (5) and inserting in lieu thereof "paragraph (4) or section 410 (b) (without regard to paragraph (1) (A) thereof)", and

(C) by striking out paragraph (7) and inserting in lieu thereof:

"(7) A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part satisfies the requirements of section 411 (relating to minimum vesting standards)."

(3) Section 404 (a) (2) (relating to deduction for contributions of an employer to employee's annuity plan) is amended by striking out "and (8)," and insert-

ing in lieu thereof "(8), (11), (12), (13), (14), and (15),".

(4) Section 406(b)(1) (relating to certain employees of foreign subsidiaries) is amended by striking out "paragraphs (3)(B) and (4) of section 401(a)" and inserting in lieu thereof "section 401(a)(4) and section 410(b) (without regard to paragraph (1)(A) thereof)".

(5) Section 407(b)(1) (relating to certain employees of domestic subsidiaries engaged in business outside the United States) is amended by striking out "paragraphs (3)(B) and (4) of section 401(a)" and inserting in lieu thereof "section 401(a)(4) and section 410(b) (without regard to paragraph (1)(A) thereof)".

(6) Section 805(d)(1)(C) (relating to definition of pension plan reserves) is amended by striking out "and (8)" and inserting in lieu thereof "(8), (11), (12), (13), (14), and (15)".

(7) Section 6161(b)(1) (relating to extensions of time for paying tax) is amended by striking out "or 42" and inserting in lieu thereof "42 or 43". The second sentence of section 6161(b) is amended by striking out "or 42" and inserting in lieu thereof ", 42, or chapter 43".

(8) Section 6201(d) (relating to assessment authority) is amended by striking out "and chapter 42" and inserting in lieu thereof ", chapter 42, and chapter 43".

(9) Section 6211 (defining deficiency) is amended—

(A) by striking out so much of subsection (a) as precedes paragraph (1) thereof and inserting in lieu thereof the following:

"(a) IN GENERAL.—For purposes of this title in the case of income, estate, and gift taxes imposed by subtitles A and B and excise taxes imposed by chapters 42 and 43, the term 'deficiency' means the amount by which the tax imposed by subtitle A or B, or chapter 42 or 43, exceeds the excess of—"; and

(B) by striking out "chapter 42" in subsection (b)(2) and inserting in lieu thereof "chapter 42 or 43".

(10) Section 6212 (relating to notice of deficiency) is amended—

(A) by striking out "chapter 42" in subsection (a) and inserting in lieu thereof "chapter 42 or 43",

(B) by striking out "or chapter 42" in subsec-

tion (b) (1) and inserting in lieu thereof "chapter 42, or chapter 43",

(C) by striking out "chapter 42, and this chapter" in subsection (b) (1) and inserting in lieu thereof "chapter 42, chapter 43, and this chapter", and

(D) by striking out "of the same decedent," in subsection (c) and inserting in lieu thereof "of the same decedent, of chapter 43 tax for the same taxable years,".

(11) Section 6213 (relating to restrictions applicable to deficiencies and petition to Tax Court) is amended—

(A) by striking out "or chapter 42" in subsection (a) and inserting in lieu thereof ", chapter 42 or 43",

(B) by striking out the heading of subsection (e) and inserting in lieu thereof:

"(e) SUSPENSION OF FILING PERIOD FOR CERTAIN EXCISE TAXES.—",

(C) by striking out "or 4945 (relating to taxes on taxable expenditures)" in subsection (e) and inserting in lieu thereof "4945 (relating to taxes on taxable expenditures), 4971 (relating to

excise taxes on failure to meet minimum funding standard)"; and

(D) by striking out "or 4945 (h) (2)" in subsection (e) and inserting in lieu thereof ", 4945 (i) (2), or 4971 (c) (3),".

(12) Section 6214 (relating to determinations by Tax Court) is amended—

(A) by amending the heading of subsection (c) to read as follows:

"(c) TAXES IMPOSED BY SECTION 507 OR CHAPTER 42 or 43.—",

(B) by inserting after "chapter 42" each place it appears in subsection (c) "or 43"; and

(C) by striking out "chapter 42" in subsection (d) and inserting in lieu thereof "chapter 42 or 43".

(13) Section 6344 (a) (1) (relating to cross references) is amended by striking out "chapter 42" and inserting in lieu thereof "chapter 42 or 43".

(14) Section 6501 (c) (3) (relating to limitations on assessment and collection) is amended by striking out "chapter 42" and inserting in lieu thereof "chapter 42 or 43".

(15) Section 6503 (relating to suspension of running of period of limitations) is amended—

(A) by striking out "chapter 42 taxes)" in subsection (a) (1) and inserting in lieu thereof "certain excise taxes)", and

(B) by inserting after "section 507" in subsection (h) "or section 4971", and by striking out "or 4945 (h) (2)" in subsection (h) and inserting in lieu thereof "4945 (i) (2), or 4971 (c) (3)".

(16) Section 6512 (relating to limitations in case of petition to Tax Court) is amended by striking out "chapter 42" each place it appears therein and inserting in lieu thereof "chapter 42 or 43".

(17) Section 6601 (d) (relating to interest on underpayment, nonpayment, or extensions of time for payment of tax) is amended by—

(A) striking out in the heading thereof "CHAPTER 42" and inserting in lieu thereof "CHAPTER 42 OR 43", and

(B) striking out "chapter 42" and inserting in lieu thereof "certain excise".

(18) Section 6653 (c) (1) (relating to income, estate, gift, and chapter 42 taxes) is amended by striking out "chapter 42" each place it appears therein (in-

cluding the heading) and inserting in lieu thereof "certain excise".

(19) Section 6659(b) (relating to applicable rules) is amended by striking out "chapter 42" and inserting in lieu thereof "certain excise".

(20) Section 6676(b) (relating to failure to supply identifying numbers) is amended by striking out "chapter 42" and inserting in lieu thereof "and certain excise".

(21) Section 6677(b) (relating to failure to file information returns with respect to certain foreign trusts) is amended by striking out "chapter 42" and inserting in lieu thereof "and certain excise".

(22) Section 6679(b) (relating to failure to file returns as to organization or reorganization of foreign corporations and as to acquisitions of their stock) is amended by striking out "chapter 42" and inserting in lieu thereof "and certain excise".

(23) Section 6682(b) (relating to false information with respect to withholding allowances based on itemized deductions) is amended by striking out "chapter 42" and inserting in lieu thereof "and certain excise".

(24) The heading of section 6861 (relating to jeopardy assessments of income, estate, and gift taxes)

is amended by striking out "AND GIFT TAXES.", and inserting in lieu thereof ", GIFT, AND CERTAIN EXCISE TAXES."

(25) Section 6862 (relating to jeopardy assessment of taxes other than income, estate, and gift taxes) is amended—

(A) by striking out "AND GIFT TAXES.", in the heading and inserting in lieu thereof ", GIFT, AND CERTAIN EXCISE TAXES.",

(B) by striking out "and gift tax)" in subsection (a) and inserting in lieu thereof "gift tax, and certain excise taxes)".

(26) Section 7422 (relating to civil actions for refund) is amended—

(A) by striking out "chapter 42" and inserting in lieu thereof "chapter 42 or 43" in subsection (e),

(B) by striking out "CHAPTER 42" in the heading of subsection (g) and inserting in lieu thereof "CHAPTER 42 OR 43",

(C) by striking out "or 4945" in subsection (g) (1) and inserting in lieu thereof "4945 or 4971",

(D) by striking out "section 4945 (a) (relating to initial taxes on taxable expenditures)" in subsection (g) (1) and inserting in lieu thereof "sec-

tion 4945 (a) (relating to initial taxes on taxable expenditures), 4971 (a) (relating to initial tax on failure to meet minimum funding standard)",

(E) by striking out "or section 4945 (b) (relating to additional taxes on taxable expenditures)" in subsection (g) (1) and inserting in lieu thereof "section 4945 (b) (relating to additional taxes on taxable expenditures), or section 4971 (b) (relating to additional tax on failure to meet minimum funding standard)", and

(F) by striking out "or 4945" in paragraphs (2) and (3) of subsection (g) and inserting in lieu thereof "4945, or 4971".

(27) Section 6204 (b) (relating to supplemental assessments) is amended by striking out "and gift taxes" and inserting in lieu thereof "gift, and certain excise taxes".

(b) Clerical Amendments.—

(1) Part I of subchapter D of chapter 1 is amended by inserting after the heading and before the table of sections the following:

"Subpart A. General rule.
"Subpart B. Special rules.

"Subpart A—General Rule".

(2) The table of chapters for subtitle D is amended by adding at the end thereof the following new item:

"Chapter 43. Qualified pension, etc., plans."

(3) The table of sections for subchapter B of chapter 68 is amended—

(A) by striking out the item relating to the section captioned "Assessable penalties with respect to information required to be furnished under section 7654" and inserting in lieu thereof:

"Sec. 6688. Assessable penalties with respect to information required to be furnished under section 7654.",

(B) by inserting at the end thereof the following new item:

"Sec. 6690. Failure to furnish information or maintain records."

(4) Subchapter B of chapter 68 is amended by striking out the heading of the section immediately preceding section 6689 and inserting in lieu thereof:

"SEC. 6688. ASSESSABLE PENALTIES WITH RESPECT TO INFORMATION REQUIRED TO BE FURNISHED UNDER SECTION 7654."

(5) The table of sections for part II of subchapter A of chapter 70 is amended by striking out "and gift taxes" in the items relating to sections 6861 and 6862 and inserting in lieu thereof "gift, and certain excise taxes".

SEC. 1017. EFFECTIVE DATES.

(a) General Rule.—Except as otherwise provided in this section, the amendments made by this part shall apply in the case of plan years beginning after the date of the enactment of this Act.

(b) EXISTING PLANS.—

(1) IN GENERAL.—Except as otherwise provided in subsections (c) and (d), in the case of a plan in existence on January 1, 1974, the amendments made by this part shall apply in the case of plan years beginning after December 31, 1975. In any case described in paragraph (2) or (3) of this subsection, such paragraphs shall apply if (and only if) their application results in a later effective date for the amendments made by this part.

(2) COLLECTIVE-BARGAINING AGREEMENTS.—In the case of a plan maintained on January 1, 1974, pursuant to one or more agreements which the Secretary of the Treasury or his delegate finds to be collective-bargaining agreements between employee representatives and one or more employers, paragraph (1) shall be applied by substituting for December 31, 1975, the earlier of—

(A) the date on which the last of such agreements relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of the enactment of this Act), or

(B) December 31, 1980.

(3) LABOR ORGANIZATION CONVENTIONS.—In the case of a plan maintained by a labor organization which is exempt from tax under section 501(c)(5)

of the Internal Revenue Code of 1954 exclusively for the benefit of its employees and their beneficiaries, paragraph (1) shall be applied by substituting for December 31, 1975, the earlier of—

(A) the date on which the second convention of such labor organization held after the date of the enactment of this Act ends, or

(B) December 31, 1980.

(c) EXISTING PLANS MAY ELECT NEW PROVISIONS.—In the case of a plan in existence on January 1, 1974, the provisions of the Internal Revenue Code of 1954 relating to participation, vesting, funding, and form of benefit (as in effect from time to time) shall apply in the case of the plan year (which begins after the date of the enactment of this Act but before the applicable date determined under subsection (b)) selected by the plan administrator and to all subsequent plan years, if the plan administrator elects (in such manner and at such time as the Secretary of the Treasury or his delegate shall by regulations prescribe) to have such provisions so apply. Any election made under this subsection, once made, shall be irrevocable.

(d) CERTAIN DEFINITIONS.—Section 414 of the Internal Revenue Code of 1954 (other than subsections (b) and (c) of such section 414), as added by section 1015(a)

of this Act, shall take effect on the date of the enactment of this Act.

PART II—CERTAIN OTHER PROVISIONS RELATING TO QUALIFIED RETIREMENT PLANS

SEC. 1021. ADDITIONAL PLAN REQUIREMENTS.

(a) JOINT AND SURVIVOR ANNUITY REQUIREMENT.—

(1) IN GENERAL.—Section 401 (a) (relating to requirements for qualification) is amended by inserting after paragraph (10) the following new paragraph:

"(11) (A) A trust shall not constitute a qualified trust under this section if the plan of which such trust is a part provides for the payment of benefits in the form of an annuity for the life of a participant (where the participant is married on the annuity starting date), unless such plan provides for the payment of such benefit in a form having the effect of a joint and survivor annuity, with the survivor annuity being not less than one-half of the amount of the annuity payable to the participant during the joint lives of the participant and his spouse.

"(B) A plan shall be treated as satisfying the requirements of this paragraph if, under the plan, each participant has a reasonable period (as prescribed by

the Secretary or his delegate by regulations) before the annuity starting date during which he may elect in writing, after having received a written explanation of the terms and conditions of the joint and survivor annuity and the effect of an election under this subparagraph, not to take such joint and survivor annuity.

"(C) This paragraph shall apply only if—

"(i) the annuity starting date for the annuity provided in the plan occurs on or after the effective date of this paragraph, and

"(ii) the participant was an active participant in the plan on or after such effective date."

(2) CERTAIN ADDITIONAL REQUIREMENTS APPLY ONLY TO PLANS TO WHICH VESTING REQUIREMENTS APPLY.—Section 401(a) (relating to requirements for qualification) is amended by adding at the end thereof the following new sentence: "Paragraphs (11), (12), (13), (14), (15), and (19) shall apply only in the case of a plan to which section 411 (relating to minimum vesting standards) applies."

(b) REQUIREMENTS IN CASE OF MERGERS AND CONSOLIDATIONS OF PLANS OR TRANSFERS OF PLAN ASSETS.—Section 401(a) is amended by inserting after paragraph (11) the following new paragraph:

"(12) A trust shall not constitute a qualified trust

under this section unless the plan of which such trust is a part provides that—

"(A) in the case of any merger or consolidation with, or transfer of assets or liabilities to, any other plan after October 22, 1973, each participant in the plan would (if the plan then terminated) receive a benefit immediately after the merger, consolidation, or transfer which is equal to or greater than the benefit he would have been entitled to receive immediately before the merger, consolidation, or transfer (if the plan had then terminated); and

"(B) no merger, consolidation, or transfer of assets or liabilities to another plan may be made after the date of the enactment of this paragraph unless the plan administrator has filed with the Secretary or his delegate, at least 30 days before such merger, consolidation, or transfer, an actuarial statement of valuation evidencing compliance with the requirements of subparagraph (A)."

(c) Retirement Benefits May Not Be Assigned or Alienated.—Section 401(a) is amended by inserting after paragraph (12) the following new paragraph:

"(13) A trust shall not constitute a qualified trust under this section unless the plan of which such trust

is a part provides that benefits provided under the plan may not be assigned or alienated. For purposes of the preceding sentence, there shall not be taken into account any voluntary and revocable assignment of not to exceed 10 percent of any benefit payment for the purpose of paying premiums on life, medical, or hospital insurance or for any noncommercial and nonprofit purpose specified under regulations prescribed by the Secretary or his delegate."

(d) REQUIREMENT THAT PAYMENT OF BENEFITS BEGIN NOT LATER THAN WHEN THE PARTICIPANT ATTAINS AGE 65 OR HAS COMPLETED 10 YEARS OF PARTICIPATION.—Section 401 (a) is amended by inserting after paragraph (13) the following new paragraph:

"(14) A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that, unless the participant otherwise elects, the payment of benefits under the plan to the participant will begin not later than the 60th day after the latest of the close of the plan year in which—

"(A) the date on which the participant attains age 65,

"(B) occurs the 10th anniversary of the year in which the participant commenced participation in the plan, or

"(C) the participant terminates his service with the employer."

(e) REQUIREMENT THAT PLAN BENEFITS ARE NOT DECREASED BY CERTAIN SOCIAL SECURITY INCREASES.—Section 401 (a) is amended by inserting after paragraph (14) the following new paragraph:

"(15) a trust shall not constitute a qualified trust under this section unless under the plan of which such trust is a part—

"(A) in the case of a participant or beneficiary who is receiving benefits under such plan, or

"(B) in the case of a participant who is separated from the service and who has nonforfeitable rights to benefits,

such benefits are not decreased by reason of any increase in the benefit levels payable under title II of the Social Security Act, if such increase in benefit levels takes place after the date of the enactment of this paragraph or (if later) the date of first receipt of such benefits or the date of such separation, as the case may be."

(f) REQUIREMENT OF NONFORFEITABILITY IN CASE OF CERTAIN WITHDRAWALS.—Section 401 (a) is amended by inserting after paragraph (18) the following new paragraph:

"(19) A trust shall not constitute a qualified trust

under this section if under the plan of which such trust is a part any part of a participant's accrued benefit derived from employer contributions, to the extent nonforfeitable as determined under section 411, is forfeitable solely because of withdrawal by such participant of any amount attributable to the benefit derived from contributions made by such participant."

SEC. 1022. MISCELLANEOUS PROVISIONS.

(a) REQUIREMENT THAT PLAN NOT BE DISCRIMINATORY.—Section 401 (a) (4) (disqualifying discriminatory plans) is amended to read as follows:

"(4) If the contributions or the benefits provided under the plan do not discriminate in favor of employees who are—

"(A) officers,

"(B) shareholders, or

"(C) highly compensated."

(b) AMENDMENTS RELATING TO SELF-EMPLOYED INDIVIDUALS AND OWNER-EMPLOYEES.—

(1) AMENDMENT OF SECTION 401(a)(10).—So much of subparagraph (A) of section 401 (a) (10) as precedes clause (i) thereof is amended to read as follows:

"(A) paragraph (3), the first and second sen-

tences of paragraph (5), and section 410 shall not apply, but—".

(2) AMENDMENT OF SECTION 401(d)(3).—Section 401 (d) (3) (relating to additional requirements for qualification of trusts and plans benefiting owner-employees) is amended to read as follows:

"(3) (A) The plan benefits each employee having 3 or more years of service (within the meaning of section 410 (a) (3)).

"(B) For purposes of subparagraph (A), the term 'employee' does not include—

"(i) any employee included in a unit of employees covered by a collective bargaining agreement described in section 410 (b) (2) (A), and

"(ii) any employee who is a nonresident alien individual described in section 410 (b) (2) (C)."

(c) PERSONS OTHER THAN BANKS MAY BE TRUSTEES OF TRUSTS BENEFITING OWNER-EMPLOYEES.—

(1) The first sentence of section 401 (d) (1) is amended to read as follows: "In the case of a trust which is created on or after October 10, 1962, or which was created before such date but is not exempt from tax under section 501 (a) as an organization described in subsection (a) on the day before such date, the assets

thereof are held by a bank or other person who demonstrates to the satisfaction of the Secretary or his delegate that the manner in which he will hold such assets will be consistent with the requirements of this section. A trust shall not be disqualified under this paragraph merely because a person (including the employer) other than the trustee or custodian so holding plan assets may be granted, under the trust instrument, the power to control the investment of the trust funds either by directing investments (including reinvestments, disposals, and exchanges) or by disapproving proposed investments (including reinvestments, disposals, or exchanges)."

(2) The second sentence of section 401(d)(1) is amended by striking out "the date of the enactment of this subsection" and inserting in lieu thereof "October 10, 1962,".

(d) CERTAIN CUSTODIAL ACCOUNTS.—Subsection (f) of section 401 (relating to certain custodial accounts) is amended to read as follows:

"(f) CERTAIN CUSTODIAL ACCOUNTS AND ANNUITY CONTRACTS.—For purposes of this title, a custodial account or an annuity contract shall be treated as a qualified trust under this section if—

"(1) the custodial account or annuity contract

would, except for the fact that it is not a trust, constitute a qualified trust under this section, and

"(2) the assets thereof are held by a bank (as defined in subsection (d)(1)) or another person who demonstrates, to the satisfaction of the Secretary or his delegate, that the manner in which he will hold the assets will be consistent with the requirements of this section.

For purposes of this title, in the case of a custodial account or annuity contract treated as a qualified trust under this section by reason of this subsection, the person holding the assets of such account or holding such contract shall be treated as the trustee thereof."

(c) CUSTODIAL ACCOUNTS FOR REGULATED INVESTMENT COMPANY STOCK.—Section 403(b) (relating to taxability of beneficiary under annuity purchased by section 501(c)(3) organization or public school) is amended by adding at the end thereof the following new paragraph:

"(7) CUSTODIAL ACCOUNTS FOR REGULATED INVESTMENT COMPANY STOCK.—

"(A) AMOUNTS PAID TREATED AS CONTRIBUTIONS.—For purposes of this title, amounts paid by an employer described in paragraph (1)(A) to a custodial account which satisfies the requirements of

section 401 (f) (2) shall be treated as amounts contributed by him for an annuity contract for his employee if the amounts are paid to provide a retirement benefit for that employee and are to be invested in regulated investment company stock to be held in that custodial account.

"(B) ACCOUNT TREATED AS PLAN.—For purposes of this title, a custodial account which satisfies the requirements of section 401 (f) (2) shall be treated as an organization described in section 401 (a) solely for purposes of subchapter F and subtitle F with respect to amounts received by it (and income from investment thereof) which are excluded under this subsection from the gross income of the employees on whose behalf such amounts are paid.

"(C) REGULATED INVESTMENT COMPANY.—For purposes of this paragraph, the term 'regulated investment company' means a domestic corporation which is a regulated investment company within the meaning of section 851 (a), and which issues only redeemable stock."

(f) INSURED CREDIT UNIONS.—Effective as of January 1, 1974, the last sentence of section 401 (d) (1) is amended by striking out "section 581," and inserting in lieu

thereof "section 581, an insured credit union (within the meaning of section 101 (6) of the Federal Credit Union Act),".

(g) PUBLIC INSPECTION OF CERTAIN INFORMATION WITH RESPECT TO PENSION, PROFIT-SHARING, AND STOCK BONUS PLANS.—

(1) AMENDMENT OF SECTION 6104 (a).—Paragraph (1) of section 6104 (a) (relating to public inspection of applications for tax exemption) is amended—

(A) by redesignating subparagraph (B) as subparagraph (D) and by inserting after subparagraph (A) the following new subparagraphs:

"(B) PENSION, ETC., PLANS.—The following shall be open to public inspection at such times and in such places as the Secretary or his delegate may prescribe:

"(i) any application filed with respect to the qualification of a pension, profit-sharing, or stock bonus plan under section 401 (a), 403 (a), or 405 (a), under an individual retirement account described in section 408 (a), or under an individual retirement annuity described in section 408 (b),

"(ii) any application filed with respect to the exemption from tax under section 501 (a)

of an organization forming part of a plan or account referred to in clause (i),

"(iii) any papers submitted in support of an application referred to in clause (i) or (ii), and

"(iv) any letter or other document issued by the Internal Revenue Service and dealing with the qualification referred to in clause (i) or the exemption from tax referred to in clause (ii).

"(C) CERTAIN NAMES AND COMPENSATION NOT TO BE OPENED TO PUBLIC INSPECTION.—In the case of any application, document, or other papers, referred to in subparagraph (B), information from which the compensation (including deferred compensation) of any participant may be ascertained shall not be opened to public inspection under subparagraph (B)."

(B) The heading of subparagraph (A) of section 6104(a)(1) is amended to read as follows:

"(A) ORGANIZATIONS DESCRIBED IN SECTION 501.—".

(C) The heading of subparagraph (D) of section 6104(a)(1) (as redesignated by subparagraph

(A) of this paragraph) is amended to read as follows:

"(D) WITHHOLDING OF CERTAIN OTHER INFORMATION.—".

(D) Subparagraph (D) of section 6104(a)(1) (as so redesignated) is amended by striking out "subparagraph (A)" each place it appears and inserting in lieu thereof "subparagraph (A) or (B)".

(2) AMENDMENT OF SECTION 6104(a)(2).—Subparagraph (A) of section 6104(a)(2) is amended by adding at the end thereof "any application referred to in subparagraph (B) of subsection (a)(1) of this section, and".

(3) AMENDMENT OF SECTION 6104(b).—Section 6104(b) (relating to inspection of annual information returns) is amended by striking out "and 6056" and inserting in lieu thereof "6056, and 6058".

(4) EFFECTIVE DATE.—The amendments made by this subsection shall apply to applications filed (or documents issued) after December 31, 1975.

(h) CERTAIN PUERTO RICAN PENSION, ETC., PLANS TO BE EXEMPT FROM TAX UNDER SECTION 501(a).—Effective for taxable years beginning after December 31,

1973, for purposes of section 501 (a) of the Internal Revenue Code of 1954 (relating to exemption from tax), any trust forming part of a pension, profit-sharing, or stock bonus plan all of the participants of which are residents of the Commonwealth of Puerto Rico shall be treated as an organization described in section 401 (a) of such Code if such trust—

(1) forms a part of a pension, profit-sharing, or stock bonus plan, and

(2) is exempt from income tax under the laws of the Commonwealth of Puerto Rico.

(i) YEAR OF DEDUCTION FOR CERTAIN EMPLOYER CONTRIBUTIONS FOR SEVERANCE PAYMENTS REQUIRED BY FOREIGN LAW.—Effective for taxable years beginning after December 31, 1973, if—

(1) an employer is engaged in a trade or business in a foreign country,

(2) such employer is required by the laws of that country to make payments, based on periods of service, to its employees or their beneficiaries after the employees' retirement, death, or other separation from the service, and

(3) such employer establishes a trust (whether organized within or outside the United States) for the purpose of funding the payments required by such law,

then, in determining for purposes of paragraph (5) of section 404 (a) of the Internal Revenue Code of 1954 the taxable year in which any contribution to or under the plan is includible in the gross income of the nonresident alien employees of such employer, such paragraph (5) shall be treated as not requiring that separate accounts be maintained for such nonresident alien employees.

SEC. 1023. STUDY OF GOVERNMENTAL PLANS.

(a) STUDY.—The Committee on Ways and Means and the Committee on Education and Labor of the House of Representatives shall study retirement plans established and maintained or financed (directly or indirectly) by the Government of the United States, by any State (including the District of Columbia) or political subdivision thereof, or by any agency or instrumentality of any of the foregoing. Such study shall include an analysis of—

(1) the adequacy of existing levels of participation, vesting, and financing arrangements,

(2) existing fiduciary standards,

(3) the unique circumstances affecting mobility of government employees and individuals employed under Federal procurement, construction, or research contracts or grants, and

(4) the necessity for Federal legislation and standards with respect to such plans.

In determining whether any such plan is adequately financed, each committee shall consider the necessity for minimum funding standards, as well as the taxing power of the government maintaining the plan.

(b) REPORTS AND RECOMMENDATIONS.—Not later than December 31, 1976, the Committee on Ways and Means and the Committee on Education and Labor shall each submit to the House of Representatives the results of the studies conducted under subsection (a), together with such recommendations as may be appropriate.

SEC. 1024. PROTECTION FOR EMPLOYEES UNDER FEDERAL PROCUREMENT, CONSTRUCTION, OR RESEARCH CONTRACTS OR GRANTS.

(a) SECRETARY OF LABOR TO CONDUCT STUDY.—The Secretary of Labor shall, during the 2-year period beginning on the date of the enactment of this Act, conduct a full and complete study and investigation of the steps necessary to be taken to insure that professional, scientific, and technical personnel and others working in associated occupations employed under Federal procurement, construction, or research contracts or grants will, to the extent feasible, be protected against forfeitures of pension or retirement rights or benefits, otherwise provided, as a consequence of job transfers or loss of employment resulting from terminations or modifications of Federal

contracts, grants, or procurement policies. The Secretary of Labor shall report the results of its study and investigation to the Congress within 2 years after the date of the enactment of this Act.

(b) CONSULTATION.—In the course of conducting the study and investigation described in subsection (a), and in developing the regulations referred to in subsection (c), the Secretary of Labor shall consult—

(1) with appropriate professional societies, business organizations, and labor organizations, and

(2) with the heads of interested Federal departments and agencies.

(c) DEVELOPMENT OF REGULATIONS.—Within 1 year after the date on which he submits his report to the Congress under subsection (a), the Secretary of Labor shall, if he determines it to be feasible, develop regulations which will provide the protection of pension and retirement rights and benefits referred to in subsection (a).

(d) EITHER HOUSE MAY DISAPPROVE REGULATIONS.—

(1) IN GENERAL.—Any regulations developed pursuant to subsection (c) shall take effect if, and only if—

(A) the Secretary of Labor, not later than the day which is 3 years after the date of the

enactment of this Act, delivers a copy of such regulations to the House of Representatives and a copy to the Senate, and

(B) before the close of the 90-day period which begins on the day on which the copies of such regulations are delivered to the House of Representatives and to the Senate, neither the House of Representatives nor the Senate adopts, by an affirmative vote of a majority of those present and voting in that House, a resolution of disapproval.

(2) RESOLUTION OF DISAPPROVAL.—For purposes of this subsection, the term "resolution of disapproval" means only a resolution of either House of Congress, the matter after the resolving clause of which is as follows: "That the   does not favor the taking effect of the regulations transmitted to the Congress by the Secretary of Labor on   ", the first blank space therein being filled with the name of the resolving House and the second blank space therein being filled with the day and year.

(3) REFERENCE OF RESOLUTION TO COMMITTEE.—A resolution of disapproval in the House of Representatives shall be referred to the Committee on Education and Labor. A resolution of disapproval in the

Senate shall be referred to the Committee on Labor and Public Welfare.

(4) DISCHARGE OF COMMITTEE CONSIDERING RESOLUTION.—

(A) If the Committee to which a resolution of disapproval has been referred has not reported it at the end of 7 calendar days after its introduction, it is in order to move either to discharge the committee from further consideration of the resolution or to discharge the committee from further consideration of any other resolution of disapproval which has been referred to the committee.

(B) A motion to discharge may be made only by an individual favoring the resolution, is highly privileged (except that it may not be made after the committee has reported a resolution of disapproval), and debate thereon shall be limited to not more than 1 hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(C) If the motion to discharge is agreed to or disagreed to, the motion may not be renewed,

nor may another motion to discharge the committee be made with respect to any other resolution of disapproval.

(5) PROCEDURE AFTER REPORT OR DISCHARGE OF COMMITTEE; DEBATE.—

(A) When the committee has reported, or has been discharged from further consideration of, a resolution of disapproval, it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion is highly privileged and is not debatable. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(B) Debate on the resolution of disapproval shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the resolution. A motion further to limit debate is not debatable. An amendment to, or motion to recommit, the resolution is not in order, and it is not in order to move to reconsider the vote by which the resolution is agreed to or disagreed to.

(6) DECISIONS WITHOUT DEBATE ON MOTION TO POSTPONE OR PROCEED.—

(A) Motions to postpone, made with respect to the discharge from committee or the consideration of a resolution of disapproval, and motions to proceed to the consideration of other business, shall be decided without debate.

(B) Appeals from the decisions of the Chair relating to the application of the rules of the House of Representatives or the Senate, as the case may be, to the procedure relating to any resolution of disapproval shall be decided without debate.

(7) COPIES TO BE PRESENTED ON SAME DAY.—Whenever the Secretary of Labor transmits copies of the regulations to the Congress, a copy of such regulations shall be delivered to each House of Congress on the same day and shall be delivered to the Clerk of the House of Representatives if the House is not in session and to the Secretary of the Senate if the Senate is not in session.

(8) DETERMINATION OF 90-DAY PERIOD.—The 90-day period referred to in paragraph (1) shall be computed by excluding—

(A) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain or an adjournment of the Congress sine die, and

(B) any Saturday and Sunday, not excluded under subparagraph (A), when either House is not in session.

(9) RULES OF HOUSE OF REPRESENTATIVES AND SENATE ON RESOLUTIONS OF DISAPPROVAL.—This subsection is enacted by the Congress—

(A) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and as such they are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of resolutions of disapproval described in paragraph (2); and they supersede other rules only to the extent that they are inconsistent therewith; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.

SEC. 1025. RETROACTIVE CHANGES IN PLAN.

Section 401(b) (relating to certain retroactive changes in plan) is amended to read as follows:

"(b) CERTAIN RETROACTIVE CHANGES IN PLAN.—A stock bonus, pension, profit-sharing, or annuity plan shall be considered as satisfying the requirements of subsection (a) for the period beginning with the date on which it was put into effect, or for the period beginning with the earlier of the date on which there was adopted or put into effect any amendment which caused the plan to fail to satisfy such requirements, and ending with the time prescribed by law for filing the return of the employer for his taxable year in which such plan or amendment was adopted (including extensions thereof) or such later time as the Secretary or his delegate may designate, if all provisions of the plan which are necessary to satisfy such requirements are in effect by the end of such period and have been made effective for all purposes for the whole of such period."

SEC. 1026. EFFECTIVE DATES.

The amendments made by section 1021 shall apply to plan years to which part I applies. Except as otherwise provided in section 1022, the amendments made by section 1022 shall apply to plan years to which part I applies. Sections 1023 and 1024 and the amendment made by section 1025 shall take effect on the date of the enactment of this Act.

PART III—REGISTRATION AND INFORMATION

SEC. 1031. REGISTRATION AND INFORMATION.

(a) ANNUAL REGISTRATION AND INFORMATION RETURNS.—Part III of subchapter A of chapter 61 (relating to information returns) is amended by adding at the end thereof the following new subpart;

"Subpart E—Registration of and Information Concerning Pension, Etc., Plans

"Sec. 6057. Annual registration, etc.
"Sec. 6058. Information required in connection with certain plans of deferred compensation.
"Sec. 6059. Periodic report by actuary.

"SEC. 6057. ANNUAL REGISTRATION, ETC.

"(a) ANNUAL REGISTRATION.—

"(1) GENERAL RULE.—Within such period after the end of a plan year as the Secretary or his delegate may by regulations prescribe, the plan administrator (within the meaning of section 414 (g)) of each funded plan to which part I of subchapter D of chapter 1 applied for such plan year shall file a registration statement with the Secretary or his delegate.

"(2) CONTENTS.—The registration statement required by paragraph (1) shall set forth—

"(A) the name of the plan,

"(B) the name and address of the plan administrator,

"(C) the name and taxpayer identifying number of each participant in the plan—

"(i) who, during such plan year, separated from the service covered by the plan,

"(ii) who is entitled to a deferred vested benefit under the plan as of the end of such plan year, and

"(iii) with respect to whom retirement benefits were not paid under the plan during such plan year,

"(D) the nature, amount, and form of the deferred vested benefit to which such participant is entitled, and

"(E) such other information as the Secretary or his delegate may require.

At the time he files the registration statement under this subsection, the plan administrator shall furnish evidence satisfactory to the Secretary or his delegate that he has complied with the requirement contained in subsection (e).

"(b) NOTIFICATION OF CHANGE IN STATUS.—Any plan administrator required to register under subsection (a) shall also notify the Secretary or his delegate, at such time as may be prescribed by regulations, of—

"(1) any change in the name of the plan,

"(2) any change in the name or address of the plan administrator,

"(3) the termination of the plan, or

"(4) the merger or consolidation of the plan with any other plan or its division into two or more plans.

"(c) VOLUNTARY REPORTS. To the extent provided in regulations prescribed by the Secretary or his delegate, the Secretary or his delegate may receive from—

"(1) any plan to which subsection (a) applies, and

"(2) any other plan (including any governmental plan or church plan (within the meaning of section 414)),

such information (including information relating to plan years beginning before January 1, 1974) as the plan administrator may wish to file with respect to the deferred vested benefit rights of any participant separated from the service covered by the plan during any plan year.

"(d) TRANSMISSION OF INFORMATION TO SECRETARY OF HEALTH, EDUCATION, AND WELFARE.—The Secretary or his delegate shall transmit copies of any statements, notifications, reports, or other information obtained by him under this section to the Secretary of Health, Education, and Welfare.

"(e) INDIVIDUAL STATEMENT TO PARTICIPANT.—Each plan administrator required to file a registration state-

ment under subsection (a) shall, before the expiration of the time prescribed for the filing of such registration statement, also furnish to each participant described in subsection (a) (2) (C) an individual statement setting forth the information with respect to such participant required to be contained in such registration statement.

"(f) REGULATIONS.—

"(1) IN GENERAL.—The Secretary, after consultation with the Secretary of Health, Education, and Welfare, may prescribe such regulations as may be necessary to carry out the provisions of this section. Any such regulations shall be effective with respect to plan years beginning after December 31, 1975, only if approved by the Secretary of Labor.

"(2) MULTIEMPLOYER PLANS.—This section shall apply to any multiemployer plan only to the extent provided in regulations prescribed under this subsection. For purposes of this paragraph, the term 'multiemployer plan' means a plan to which more than one employer is required to contribute.

"(g) CROSS REFERENCE.—

"For provisions relating to penalties for failure to register or furnish statements required by this section, see section 6652(e) and section 6690.

"SEC. 6058. INFORMATION REQUIRED IN CONNECTION WITH CERTAIN PLANS OF DEFERRED COMPENSATION.

"(a) IN GENERAL.—Every employer who maintains a pension, annuity, stock bonus, profit-sharing, or other funded plan of deferred compensation described in part I of subchapter D of chapter 1, or the plan administrator (within the meaning of section 414 (g)) of the plan, shall file an annual return stating such information as the Secretary or his delegate may by or regulations prescribe with respect to the qualification, financial condition, and operations of the plan; except that, in the discretion of the Secretary or his delegate, the employer may be relieved from stating in its return any information which is reported in other returns.

"(b) EMPLOYER.—For purposes of this section, the term 'employer' includes a person described in section 401 (c) (4) and an individual who establishes an individual retirement account or annuity described in section 408.

"(c) CROSS REFERENCE.—

"For provisions relating to penalties for failure to file a return required by this section, see section 6652(f)."

(b) SANCTIONS.—

(1) FAILURE TO FILE REGISTRATION STATEMENTS OR NOTIFICATION OF CHANGE IN STATUS.—

(A) Section 6652 (relating to failure to file

certain information returns) is amended by redesignating subsection (e) as subsection (g) and by inserting after subsection (d) the following new subsections:

"(e) ANNUAL REGISTRATION AND OTHER NOTIFICATION BY PENSION PLAN.—

"(1) REGISTRATION.—In the case of any failure to file a registration statement required under section 6057 (a) (relating to annual registration of certain plans) which includes all participants required to be included in such statement, on the date prescribed therefor (determined without regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause, there shall be paid (on notice and demand by the Secretary or his delegate and in the same manner as tax) by the person failing so to file, an amount equal to $1 for each participant with respect to whom there is a failure to file, multiplied by the number of days during which such failure continues, but the total amount imposed under this paragraph on any person for any failure to file with respect to any plan year shall not exceed $5,000.

"(2) NOTIFICATION OF CHANGE OF STATUS.—In the case of failure to file a notification required under section 6057 (b) (relating to notification of change of

status) on the date prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause, there shall be paid (on notice and demand by the Secretary or his delegate and in the same manner as tax) by the person failing so to file, $1 for each day during which such failure continues, but the total amounts imposed under this paragraph on any person for failure to file any notification shall not exceed $1,000.

"(f) INFORMATION REQUIRED IN CONNECTION WITH CERTAIN PLANS OF DEFERRED COMPENSATION.—In the case of failure to file a return required under section 6058 (relating to information required in connection with certain plans of deferred compensation) or 6047 (relating to information relating to certain trusts and annuity and bond purchase plans) on the date and in the manner prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause, there shall be paid (on notice and demand by the Secretary or his delegate and in the same manner as tax) by the person failing so to file, $10 for each day during which such failure continues, but the total amount imposed under this subsection on any person for failure to file any return shall not exceed $5,000."

(B) (i) The section heading for section 6652

is amended by adding ", **REGISTRATION STATEMENTS, ETC.**" before the period at the end thereof.

(ii) The item relating to section 6652 in the table of contents for subchapter A of chapter 68 is amended by adding ", registration statements, etc." before the period at the end thereof.

(2) FAILURE TO FURNISH STATEMENT TO PARTICIPANT.—

(A) Subchapter B of chapter 68 (relating to assessable penalties) is amended by adding at the end thereof the following new section:

"SEC. 6691. FRAUDULENT STATEMENT OR FAILURE TO FURNISH STATEMENT TO PLAN PARTICIPANT.

"Any person required under section 6057(e) to furnish a statement to a participant who willfully furnishes a false or fraudulent statement, or who willfully fails to furnish a statement in the manner, at the time, and showing the information required under section 6057(e), or regulations prescribed thereunder, shall for each such act, or for each such failure, be subject to a penalty under this subchapter of $50, which shall be assessed and collected in the same manner as the tax on employers imposed by section 3111."

(B) The table of sections for such subchapter B

is amended by adding at the end thereof the following new item:

"Sec. 6691. Fraudulent statement or failure to furnish statement to plan participant."

(c) CLERICAL AMENDMENTS.—

(1) The table of subparts for such part III is amended by adding at the end thereof the following:

"Subpart E. Registration of and information concerning pension, etc., plans."

(2) Section 6033(c) (relating to cross references) is amended by adding at the end thereof the following:

"For provisions relating to information required in connection with certain plans of deferred compensation, see section 6058."

(3) Subsection (d) of section 6047 (relating to information with respect to certain trusts and annuity and bond purchase plans) is amended to read as follows:

"(d) CROSS REFERENCES.—

"(1) For provisions relating to penalties for failure to file a return required by this section, see section 6652(f).

"(2) For criminal penalty for furnishing fraudulent information, see section 7207."

SEC. 1032. DUTIES OF SECRETARY OF HEALTH, EDUCATION, AND WELFARE.

Title XI of the Social Security Act (relating to general provisions) is amended by adding at the end of part A thereof the following new section:

"NOTIFICATION OF SOCIAL SECURITY CLAIMANT WITH RESPECT TO DEFERRED VESTED BENEFITS

"SEC. 1131. (a) Whenever—

"(1) the Secretary makes a finding of fact and a decision as to—

"(A) the entitlement of any individual to monthly benefits under section 202, 223, or 228,

"(B) the entitlement of any individual to a lump-sum death payment payable under section 202 (i) on account of the death of any person to whom such individual is related by blood, marriage, or adoption, or

"(C) the entitlement under section 226 of any individual to hospital insurance benefits under part A of title XVIII, or

"(2) the Secretary is requested to do so—

"(A) by any individual with respect to whom the Secretary holds information obtained under section 6057 of the Internal Revenue Code of 1954, or

"(B) in the case of the death of the individual referred to in subparagraph (A), by the individual who would be entitled to payment under section 204 (d) of this Act,

he shall transmit to the individual referred to in paragraph (1) or the individual making the request under paragraph (2) any information, as reported by the employer, regarding any deferred vested benefit transmitted to the Secretary pursuant to such section 6057 (or under section 106 of the Employee Benefit Security Act of 1974) with respect to the individual referred to in paragraph (1) or (2) (A) or the person on whose wages and self-employment income entitlement (or claim of entitlement) is based.

"(b) (1) For purposes of section 201 (g) (1), expenses incurred in the administration of subsection (a) shall be deemed to be expenses incurred for the administration of title II.

"(2) There are hereby authorized to be appropriated to the Federal Old-Age and Survivors Insurance Trust Fund for each fiscal year (commencing with the fiscal year ending June 30, 1974) such sums as the Secretary deems necessary on account of additional administrative expenses resulting from the enactment of the provisions of subsection (a)."

SEC. 1033. ENROLLMENT OF AND REPORTS BY ACTUARIES.

(a) Reports by Actuaries.—Subpart E of part III of subchapter A of chapter 61 (relating to registration of and information concerning pension, etc., plans) is amended by adding at the end thereof the following new section:

"SEC. 6059. PERIODIC REPORT OF ACTUARY.

"(a) GENERAL RULE.—The actuarial report described in subsection (b) shall be filed by the plan administrator (as defined in section 414(g)) of each defined benefit plan to which section 412 applies, for the first plan year for which section 412 applies to the plan and for each third plan year thereafter (or more frequently if the Secretary or his delegate determines that more frequent reports are necessary).

"(b) ACTUARIAL REPORT.—The actuarial report of a plan required by subsection (a) shall be prepared and signed by an enrolled actuary (within the meaning of section 7517) and shall contain—

"(1) a description of the plan,

"(2) a description of the funding method and actuarial assumptions used to determine costs under the plan,

"(3) a certification as to whether the funding standard account required under section 412(b)(1) has been maintained during the period to which the report relates,

"(4) such other information regarding the plan as the Secretary or his delegate may by regulations require, and

"(5) a statement—

"(A) that to the best of his knowledge the report is complete and accurate, and

"(B) of his opinion regarding the reasonableness of the funding method and actuarial assumptions used to determine the normal costs under the plan.

"(c) TIME AND MANNER OF FILING.—The actuarial report and statement required by this section shall be filed at the time and in the manner provided by regulations prescribed by the Secretary or his delegate."

(b) ASSESSABLE PENALTIES.—Subchapter B of chapter 68 (relating to assessable penalties) is amended by adding at the end thereof the following new section:

"SEC. 6692. FAILURE TO FILE ACTUARIAL REPORT.

"The plan administrator (as defined in section 414 (g)) of each defined benefit plan to which section 412 applies who fails to file the report required by section 6059 at the time and in the manner required by section 6059, shall pay a penalty of $1,000 for each such failure unless it is shown that such failure is due to reasonable cause."

(c) ENROLLMENT OF ACTUARIES.—Chapter 77 (relating to miscellaneous provisions) is amended by inserting at the end thereof the following new section:

"SEC. 7517. ENROLLMENT OF ACTUARIES.

"The Secretary or his delegate shall, by regulations, establish reasonable standards and qualifications for persons performing actuarial services described in section 401 (a) (12) or 6059 and shall enroll persons found by the Secretary or his delegate to satisfy such standards and qualifications. Such standards and qualifications shall include—

"(1) education and training in actuarial mathematics and methodology, as evidenced by—

"(A) a degree in actuarial mathematics or its equivalent from an accredited college or university, or

"(B) successful completion of an examination in actuarial mathematics and methodology to be given by the Secretary, or

"(C) successful completion of other actuarial examinations deemed by the Secretary to be at least equivalent to the examination referred to in subparagraph (B), and

"(2) an appropriate period of responsible actuarial experience.

The Secretary or his delegate may, after notice and an opportunity for a hearing, suspend or terminate the enroll-

ment of a person under this section if the Secretary or his delegate finds that such person has not satisfied requirements for enrollment. For purposes of this title, the term 'enrolled actuary' means a person who is enrolled by the Secretary or his delegate pursuant to this section. Regulations prescribed under this section shall be effective after December 31, 1975, only if approved by the Secretary of Labor."

SEC. 1034. EFFECTIVE DATES.

This part shall take effect upon the date of the enactment of this Act; except that—

(1) the requirements of section 6059 of the Internal Revenue Code of 1954 shall apply only with respect to plan years to which part I of this title applies,

(2) the requirements of section 6057 of such Code shall apply only with respect to plan years beginning after December 31, 1975, and

(3) the requirements of section 6058 of such Code shall apply only with respect to plan years beginning after the date of the enactment of this Act.

PART IV—DECLARATORY JUDGMENTS RELATING TO QUALIFICATION OF CERTAIN RETIREMENT PLANS

SEC. 1041. TAX COURT PROCEDURE.

(a) In General.—Subchapter C of chapter 76 (relating to the Tax Court) is amended by adding at the end thereof the following new part:

"PART IV—DECLARATORY JUDGMENTS RELATING TO QUALIFICATION OF CERTAIN RETIREMENT PLANS

"Sec. 7476. Declaratory judgments.

"SEC. 7476. DECLARATORY JUDGMENTS.

"(a) CREATION OF REMEDY.—In a case of actual controversy involving a determination by the Secretary or his delegate with respect to the initial qualification or continuing qualification under subchapter D of chapter 1 of a retirement plan, or involving a failure to make a determination with respect to such an issue, upon the filing of an appropriate pleading, the United States Tax Court may make a declaration with respect to such initial qualification or continuing qualification. Any such declaration shall have the force and effect of a decision of the Tax Court and shall be reviewable as such.

"(b) LIMITATIONS.—

"(1) PETITIONER.—A pleading may be filed under this section only by a petitioner who is the employer, the plan administrator, or an employee who has qualified under regulations prescribed by the Secretary or his delegate as an interested party for purposes of pursuing administrative remedies within the Internal Revenue Service.

"(2) NOTICE.—For purposes of this section, the

filing of a pleading by any petitioner may be held by the Tax Court to be premature, unless the petitioner establishes to the satisfaction of the court that he has complied with the requirements prescribed by regulations of the Secretary or his delegate with respect to notice to other interested parties that the proceeding is being initiated.

"(3) EXHAUSTION OF ADMINISTRATIVE REMEDIES.—The Tax Court shall not issue a declaratory judgment or decree under this section in any proceeding unless it determines that the petitioner has exhausted administrative remedies available to him within the Internal Revenue Service. A petitioner shall not be deemed to have exhausted his administrative remedies with respect to a failure by the Internal Revenue Service to make a determination with respect to initial qualification or continuing qualification of a retirement plan before the expiration of 270 days after the request for such determination was made.

(4) PLAN PUT INTO EFFECT.—No proceeding may be maintained under this section unless the plan (and, in the case of a controversy involving the continuing qualification of the plan because of an amendment to the plan, the amendment) with respect to which a decision of the Tax Court is sought has been put into effect before

the filing of the pleading. A plan or amendment shall be treated as in effect even though under the plan the funds contributed to the plan may be refunded if the plan (or the plan as so amended) is found to be not qualified.

"(5) TIME FOR BRINGING ACTION.—If the Secretary or his delegate sends by certified or registered mail his determination with respect to the qualification of the plan to the person requesting such determination, no proceeding may be initiated under this section by any person unless the pleading is filed before the 91st day after the date such person is notified by the Internal Revenue Service of such mailing.

"(c) COMMISSIONERS.—The chief judge of the Tax Court may assign proceedings under this section to be heard by the commissioners of the court, and the court may authorize a commissioner to enter the decision of the court with respect to such proceeding, subject to such conditions and review as the court may by rule provide.

"(d) RETIREMENT PLAN.—For purposes of this section, the term 'retirement plan' means—

"(1) a pension, profit-sharing, or stock bonus plan described in section 401 (a) or a trust which is part of such a plan,

"(2) an annuity plan described in section 403 (a), or

"(3) a bond purchase plan described in section 405(a)."

(b) TECHNICAL AMENDMENTS.—

(1) FEE FOR FILING PETITION.—Section 7451 relating to fee for filing petition) is amended by striking out "deficiency" and inserting in lieu thereof "deficiency or for a declaratory judgment under part IV of this subchapter".

(2) DATE OF DECISION.—Section 7459(c) (relating to date of decision) is amended by inserting before the period at the end of the first sentence the following: "or, in the case of a declaratory judgment proceeding under part IV of subchapter C, the date of the court's order entering the decision".

(3) VENUE FOR APPEAL OF DECISION.—Section 7482(b)(1) (relating to venue) is amended by adding at the end thereof the following new sentence: "In the case of a declaratory decision of the Tax Court, the rules of this paragraph shall be applied with respect to the employer who maintains the plan."

(c) CLERICAL AMENDMENT.—The table of parts for subchapter C of chapter 76 is amended by adding at the end thereof the following new item:

"PART IV. Declaratory judgments relating to qualification of certain retirement plans.".

(d) Effective Date.—The amendments made by this section shall take effect on January 1, 1978.

PART V—INTERNAL REVENUE SERVICE

SEC. 1051. ESTABLISHMENT OF OFFICE.

(a) In General.—Section 7802 (relating to Commissioner of Internal Revenue) is amended to read as follows:

"SEC. 7802. COMMISSIONER OF INTERNAL REVENUE; ASSISTANT COMMISSIONER (EMPLOYEE PLANS AND EXEMPT ORGANIZATIONS).

"(a) Commissioner of Internal Revenue.—There shall be in the Department of the Treasury a Commissioner of Internal Revenue, who shall be appointed by the President, by and with the advice and consent of the Senate. The Commissioner of Internal Revenue shall have such duties and powers as may be prescribed by the Secretary.

"(b) Assistant Commissioner for Employee Plans and Exempt Organizations.—There is established within the Internal Revenue Service an office to be known as the 'Office of Employee Plans and Exempt Organizations' to be under the supervision and direction of an Assistant Commissioner of Internal Revenue. As head of the Office, the Assistant Commissioner shall be respon-

sible for carrying out such functions as the Secretary or his delegate may prescribe with respect to organizations exempt from tax under section 501 (a) and with respect to plans to which part I of subchapter D of chapter 1 applies (and with respect to organizations designed to be exempt under such section and plans designed to be plans to which such part applies)."

(b) CLERICAL AMENDMENT.—The item relating to section 7802 in the table of sections for subchapter A of chapter 80 is amended to read as follows:

"Sec. 7802. Commissioner of Internal Revenue; Assistant Commissioner (Employee Plans and Exempt Organizations)."

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the 90th day after the date of the enactment of this Act.

SEC. 1052. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to the Department of the Treasury for the purpose of carrying out all functions of the Office of Employee Plans and Exempt Organizations—

(1) for the fiscal year ending June 30, 1974, $20,000,000, and

(2) for each fiscal year thereafter, $70,000,000.

Subtitle B—Other Amendments to the Internal Revenue Code Relating to Retirement Plans

SEC. 2001. CONTRIBUTIONS ON BEHALF OF SELF-EMPLOYED INDIVIDUALS AND SHAREHOLDER-EMPLOYEES.

(a) Increase in Maximum Amount Deductible for Self-Employed Individuals.—

(1) Paragraph (1) of section 404 (e) (relating to special limitations for self-employed individuals) is amended—

(A) by striking out "$2,500, or 10 percent" and inserting in lieu thereof "$7,500, or 15 percent", and

(B) by striking out "subject to the provisions of paragraph (2)" and inserting in lieu thereof "subject to paragraphs (2) and (4)".

(2) Paragraph (2) (A) of section 404 (e) is amended by striking out "shall not exceed $2,500, or 10 percent" and inserting in lieu thereof "shall (subject to paragraph (4)) not exceed $7,500, or 15 percent".

(3) Section 404 (e) is amended by adding at the end thereof the following new paragraph:

"(4) LIMITATIONS CANNOT BE LOWER THAN $750 OR 100 PERCENT OF EARNED INCOME.—The limitations under paragraphs (1) and (2)(A) for any employee shall not be less than the lesser of—

"(A) $750, or

"(B) 100 percent of the earned income derived by such employee from the trades or businesses taken into account for purposes of paragraph (1) or (2)(A), as the case may be."

(b) INCREASE IN MAXIMUM AMOUNT DEDUCTIBLE FOR SHAREHOLDER-EMPLOYEES.—Paragraph (1) of section 1379(b) (relating to taxability of shareholder-employees) is amended—

(1) by striking out "10 percent" in subparagraph (A) and inserting in lieu thereof "15 percent", and

(2) by striking out "$2,500" in subparagraph (B) and inserting in lieu thereof "$7,500".

(c) ONLY FIRST $100,000 OF ANNUAL COMPENSATION TO BE TAKEN INTO ACCOUNT.—Subsection (a) of section 401 (relating to requirements for qualification) is amended by inserting after paragraph (16) the following new paragraph:

"(17) In the case of a plan which provides contributions or benefits for employees some or all of whom are employees within the meaning of subsection (c)(1),

or are shareholder-employees within the meaning of section 1379 (d), only if the basic or regular rate of annual compensation of each employee taken into account under the plan does not exceed the first $100,000 of such compensation."

(d) DEFINED BENEFIT PLANS FOR SELF-EMPLOYED.—

(1) Subsection (a) of section 401 is amended by inserting after paragraph (17) the following new paragraph:

"(18) In the case of a trust which is part of a plan providing a defined benefit for employees some or all of whom are employees within the meaning of subsection (c) (1), or are shareholder-employees within the meaning of section 1379 (d), only if such plan satisfies the requirements of subsection (j)."

(2) Section 401 (relating to qualified pension, profit-sharing, and stock bonus plans) is amended by redesignating subsection (j) as subsection (k) and by inserting after subsection (i) the following new subsection:

"(j) DEFINED BENEFIT PLANS PROVIDING BENEFITS FOR SELF-EMPLOYED INDIVIDUALS AND SHAREHOLDER-EMPLOYEES.—

"(1) IN GENERAL.—A defined benefit plan satisfies the requirements of this subsection only if the plan

provides that the basic benefit accruing for each plan year of participation by an employee within the meaning of subsection (c) (1) (or a shareholder-employee) does not exceed the limitation on such accrual set forth in regulations prescribed by the Secretary or his delegate under this subsection to ensure that there will be reasonable comparability (assuming level funding) between the maximum retirement benefits which may be provided with favorable tax treatment under this title for such employees under—

"(A) defined contribution plans,

"(B) defined benefit plans, and

"(C) a combination of defined contribution plans and defined benefit plans.

"(2) GUIDELINE REGULATIONS.—The regulations prescribed under this subsection shall provide that a plan does not satisfy the requirements of this subsection if, under the plan, the basic benefit of any employee within the meaning of subsection (c) (1) (or a shareholder-employee) may exceed the sum of the products for each plan year of participation of—

"(A) his annual compensation (not in excess of $50,000) for such year, and

"(B) the applicable percentage determined under paragraph (3).

"(3) APPLICABLE PERCENTAGE.—

"(A) TABLE.—For purposes of paragraph (2), the applicable percentage for any individual for any plan year shall be based on the percentage shown on the following table opposite his age when his current period of participation in the plan began:

"Age when participation began:	Applicable percentage
30 or less	6.5
35	5.4
40	4.4
45	3.6
50	3.0
55	2.5
60 or over	2.0

"(B) ADDITIONAL REQUIREMENTS.—The regulations prescribed under this subsection shall include provisions—

"(i) for applicable percentages for ages between any two ages shown on the table,

"(ii) for adjusting the applicable percentages in the case of plans providing benefits other than a basic benefit,

"(iii) that any increase in the rate of accrual, and any increase in the compensation base which may be taken into account, shall,

with respect only to such increase, begin a new period of participation in the plan, and

"(iv) when appropriate, in the case of periods beginning after December 31, 1977, for adjustments in the applicable percentages based on changes in prevailing interest and mortality rates occurring after 1973.

"(4) CERTAIN CONTRIBUTIONS AND BENEFITS MAY NOT BE TAKEN INTO ACCOUNT.—A defined benefit plan which provides contributions or benefits for owner-employees shall not satisfy the requirements of this subsection unless such plan meets the requirements of subsection (a) (4) without taking into account contributions or benefits under chapter 2 (relating to tax on self-employment income), chapter 21 (relating to Federal Insurance Contributions Act), title II of the Social Security Act, or any other Federal or State law.

"(5) DEFINITIONS.—For purposes of this subsection—

"(A) BASIC BENEFIT.—The term 'basic benefit' means a benefit in the form of a straight life annuity commencing at the later of—

"(i) age 65, or

"(ii) the day 5 years after the day the

participant's current period of participation began,

under a plan which provides no ancillary benefits and to which employees do not contribute.

"(B) Shareholder-employee.—The term 'shareholder-employee' has the same meaning as when used in section 1379 (d).

"(C) Compensation.—The term 'compensation' means—

"(i) in the case of an employee within the meaning of subsection (c) (1), the earned income of such individual, or

"(ii) in the case of a shareholder-employee, the compensation received or accrued by the individual from the electing small business corporation.

"(6) Special rules.—Section 404 (e) (relating to special limitations for self-employed individuals) shall not apply to a trust to which this subsection applies."

(e) Repeal of Existing Tax Treatment of Excess Contributions.—

(1) The last sentence of section 401 (d) (5) is amended to read as follows: "Subparagraphs (A) and (B) shall not apply to contributions described in subsection (e)."

(2) Paragraph (8) of section 401 (d) is hereby repealed.

(3) Subsection (e) of section 401 is amended to read as follows:

"(e) CONTRIBUTIONS FOR PREMIUMS ON ANNUITY, ETC., CONTRACTS.—A contribution by the employer on behalf of an owner-employee is described in this subsection if—

"(1) under the plan such contribution is required to be applied (directly or through a trustee) to pay premiums or other consideration for one or more annuity, endowment, or life insurance contracts on the life of such owner-employee issued under the plan,

"(2) the amount of such contribution exceeds the amount deductible under section 404 with respect to contributions made by the employer on behalf of such owner-employee under the plan, and

"(3) the amount of such contribution does not exceed the average of the amounts which were deductible under section 404 with respect to contributions made by the employer on behalf of such owner-employee under the plan (or which would have been deductible if such section had been in effect) for the first three taxable years (A) preceding the year in which the last such annuity, endowment, or life insurance contract was issued under the plan, and (B) in which such owner-

employee derived earned income from the trade or business with respect to which the plan is established, or for so many of such taxable years as such owner-employee was engaged in such trade or business and derived earned income therefrom.

In the case of any individual on whose behalf contributions described in paragraph (1) are made under more than one plan as an owner-employee during any taxable year, the preceding sentence shall not apply if the amount of such contributions under all such plans for all such years exceeds $7,500. Any contribution which is not considered to be an excess contribution by reason of the application of this subsection shall, for purposes of section 4972(b), be taken into account as a contribution made by such owner-employee as an employee to the extent that the amount of such contribution is not deductible under section 404 for the taxable year."

(4) Clause (ii) of section 401(a)(10)(A) is amended by striking out "subsection (e)(3)(A)" and inserting in lieu thereof "subsection (e)".

(5) Subparagraph (A) of section 72(m)(5) is amended—

(A) by inserting "and" at the end of clause (i),

(B) by striking out the comma at the end of

clause (ii) and inserting in lieu thereof a period, and

(C) by striking out clause (iii).

(f) Tax on Excess Contributions.—

(1) Chapter 43 (relating to qualified pension, etc., plans) is amended by inserting after section 4971 the following new section:

"SEC. 4972. TAX ON EXCESS CONTRIBUTIONS FOR SELF-EMPLOYED INDIVIDUALS.

"(a) Tax Imposed.—In the case of a plan which provides contributions or benefits for employees some or all of whom are employees within the meaning of section 401 (c) (1), there is hereby imposed, for each taxable year of the employer who maintains such plan, a tax in an amount equal to 6 percent of the amount of the excess contributions under the plan (determined as of the close of the taxable year). The tax imposed by this subsection shall be paid by the employer who maintains the plan.

"(b) Excess Contributions.—

"(1) In general.—For purposes of this section, the term 'excess contributions' means the sum of the amounts (if any) determined under paragraphs (2), (3), and (4). For purposes of this subsection, the amount of any contribution which is allocable (determined under regulations prescribed by the Secretary or

his delegate) to the purchase of life, accident, health, or other insurance shall not be taken into account.

"(2) CONTRIBUTIONS BY OWNER-EMPLOYEES.—In the case of a plan which provides contributions or benefits for employees some or all of whom are owner-employees (within the meaning of section 401(c)(3)), the sum of—

"(A) the excess (if any) of—

"(i) the amount contributed under the plan by each owner-employee (as an employee) for the taxable year, over

"(ii) the amount permitted to be contributed by each owner-employee (as an employee) for such year, and

"(B) the amount determined under this paragraph for the preceding taxable year of the employer,

reduced by the excess (if any) of the amount described in subparagraph (A)(ii) over the amount described in subparagraph (A)(i).

"(3) DEFINED BENEFIT PLANS.—In the case of a defined benefit plan, any amount contributed under the plan by the employer during the taxable year or any prior taxable year beginning after December 31, 1975, if—

"(A) as of the close of the taxable year, the full funding limitation of the plan (determined under section 412 (c) (7)) is zero, and

"(B) such amount has not been deductible for the taxable year or any prior taxable year.

"(4) DEFINED CONTRIBUTION PLANS.—In the case of a plan other than a defined benefit plan, the portion of the amounts contributed under the plan by the employer during the taxable year and each prior taxable year beginning after December 31, 1975, which has not been deductible for the taxable year or any prior taxable year.

"(c) AMOUNT PERMITTED TO BE CONTRIBUTED BY OWNER-EMPLOYEE.—For purposes of subsection (b) (2), the amount permitted to be contributed under a plan by an owner-employee (as an employee) for any taxable year is the smallest of the following:

"(1) $2,500,

"(2) 10 percent of the earned income for such taxable year derived by such owner-employee from the trade or business with respect to which the plan is established, or

"(3) the amount of the contribution which would be contributed by the owner-employee (as an employee) if such contribution were made at the rate of contri-

butions permitted to be made by employees other than owner-employees.

In any case in which there are no employees other than owner-employees, the amount determined under the preceding sentence shall be zero.

"(d) CROSS REFERENCE.—

"For disallowance of deduction for taxes paid under this section, see section 275."

(2) CLERICAL AMENDMENT.—The table of sections for chapter 43 is amended by inserting after the item relating to section 4971 the following new item:

"Sec. 4972. Tax on excess contributions for self-employed individuals.".

(g) PREMATURE DISTRIBUTIONS TO OWNER-EMPLOYEES.—

(1) IN GENERAL.—Subparagraph (B) of section 72(m)(5) (relating to penalties applicable to certain amounts received by owner-employees) is amended to read as follows:

"(B) If a person receives an amount to which this paragraph applies, his tax under this chapter for the taxable year in which such amount is received shall be increased by an amount equal to 10 percent of the portion of the amount so received which is includible in his gross income for such taxable year."

(2) CONFORMING AMENDMENTS.—

(A) Subparagraphs (C), (D), and (E) of section 72 (m) (5) are hereby repealed.

(B) The second sentence of section 46 (a) (3) and the second sentence of section 50A (a) (3) are each amended by striking out "tax preferences)," and inserting in lieu thereof "tax preferences), section 72 (m) (5) (B) (relating to 10 percent tax on premature distributions to owner-employees),".

(C) The third sentence of section 901 (a) is amended by striking out "tax preferences)," and inserting in lieu thereof "tax preferences), against the tax imposed for the taxable year under section 72 (m) (5) (B) (relating to 10 percent tax on premature distributions to owner-employees),".

(D) Subparagraph (A) of section 56 (a) (2) and paragraph (1) of section 56 (c) are each amended by striking out "402 (e)" and inserting in lieu thereof "72 (m) (5) (B), 402 (e)".

(E) Section 404 (a) (2) is amended by striking out "(16)" and inserting in lieu thereof "(16), (17), (18), and (19)".

(h) EFFECTIVE DATES.—

(1) The amendments made by subsections (a),

(b), and (c) shall apply to taxable years beginning after December 31, 1973.

(2) The amendments made by subsections (d), (e), (f), and (g) shall apply to taxable years beginning after December 31, 1975.

SEC. 2002. DEDUCTION FOR RETIREMENT SAVINGS.

(a) ALLOWANCE OF DEDUCTION.—

(1) IN GENERAL.—Part VII of subchapter B of chapter 1 (relating to additional itemized deductions for individuals) is amended by redesignating section 219 as 220 and by inserting after section 218 the following new section:

"SEC. 219. RETIREMENT SAVINGS.

"(a) DEDUCTION ALLOWED.—In the case of an individual, there shall be allowed as a deduction amounts paid in cash during the taxable year by or on behalf of such individual for his benefit—

"(1) to an individual retirement account described in section 408(a),

"(2) for an individual retirement annuity described in section 408(b), or

"(3) for a retirement bond described in section 409 (but only if the bond is not redeemed within 12 months of the date of its issuance).

For purposes of this title, any amount paid by an employer to such a retirement account or for such a retirement annuity or bond shall constitute payment of compensation to the employee (other than a self-employed individual who is an employee within the meaning of section 401 (c) (1)) includible in his gross income, whether or not a deduction for such payment is allowable under this section to the employee after the application of subsection (b).

"(b) LIMITATIONS AND RESTRICTIONS.—

"(1) MAXIMUM DEDUCTION.—The amount allowable as a deduction under subsection (a) to an individual for any taxable year shall not exceed an amount equal to 20 percent of the compensation includible in his gross income for such taxable year, or $1,500, whichever is the lesser.

"(2) COVERED BY CERTAIN OTHER PLANS.—No deduction shall be allowed under subsection (a) for an individual for the taxable year if for any part of such year—

"(A) he was an active participant in—

"(i) a plan described in section 401 (a) which includes a trust exempt from tax under section 501 (a),

"(ii) an annuity plan described in section 403 (a),

"(iii) a qualified bond purchase plan described in section 405 (a), or

"(iv) a plan established for its employees by the United States, by a State or political division thereof, or by an agency or instrumentality of any of the foregoing, or

"(B) amounts were contributed by his employer for an annuity contract described in section 403 (b) (whether or not his rights in such contract are nonforfeitable).

"(3) CONTRIBUTIONS AFTER AGE 70½.—No deduction shall be allowed under subsection (a) with respect to any payment described in subsection (a) which is made during the taxable year of an individual who has attained age 70½ before the close of such taxable year.

"(4) RECONTRIBUTED AMOUNTS.—No deduction shall be allowed under this section with respect to a rollover contribution described in section 402 (a) (5), 403 (a) (4), or 408 (d) (3).

"(c) DEFINITIONS AND SPECIAL RULES.—

"(1) COMPENSATION.—For purposes of this section, the term 'compensation' includes earned income as defined in section 401 (c) (2).

"(2) MARRIED INDIVIDUALS.—The maximum de-

duction under subsection (b) (1) shall be computed separately for each individual, and this section shall be applied without regard to the community property laws of a State."

(2) DEDUCTION ALLOWED IN ARRIVING AT ADJUSTED GROSS INCOME.—Section 62 (defining adjusted gross income) is amended by inserting after paragraph (9) the following new paragraph:

"(10) RETIREMENT SAVINGS.—The deduction allowed by section 219 (relating to deduction of certain retirement savings)."

(b) INDIVIDUAL RETIREMENT ACCOUNTS.—Subpart A of part I of subchapter D of chapter 1 (relating to retirement plans) is amended by adding at the end thereof the following new section:

"SEC. 408. INDIVIDUAL RETIREMENT ACCOUNTS.

"(a) INDIVIDUAL RETIREMENT ACCOUNT.—For purposes of this section, the term 'individual retirement account' means a trust created or organized in the United States for the exclusive benefit of an individual or his beneficiaries, but only if the written governing instrument creating the trust meets the following requirements:

"(1) Except in the case of a rollover contribution described in subsection (d) (3) or in section 402 (a) (5) or 403 (a) (4), contributions will not be accepted for the

taxable year in excess of $1,500 on behalf of any individual.

"(2) The trustee is a bank (as defined in section 401 (d) (1)) or such other person who demonstrates to the satisfaction of the Secretary or his delegate that the manner in which such other person will adminster the trust will be consistent with the requirements of this section.

"(3) No part of the trust funds will be invested in life insurance contracts.

"(4) The interest of an individual in the balance in his account will be nonforfeitable.

"(5) The assets of the trust will not be commingled with other property except in a common trust fund.

"(6) The entire interest of an individual for whose benefit the trust is maintained will be distributed to him not later than the close of his taxable year in which he attains age 70½, or will be distributed, commencing before the close of such taxable year, in accordance with regulations prescribed by the Secretary or his delegate, over—

"(A) the life of such individual or the lives of such individual and his spouse, or

"(B) a period not extending beyond the life

expectancy of such individual or the life expectancy of such individual and his spouse.

"(7) If an individual for whose benefit the trust is maintained dies before his entire interest has been distributed to him, or if distribution has been commenced as provided in paragraph (6) to his surviving spouse and such surviving spouse dies before the entire interest has been distributed to such spouse, the entire interest (or the remaining part of such interest if distribution thereof has commenced) will, within 5 years after his death (or the death of the surviving spouse) be distributed, or applied to the purchase of an immediate annuity for his beneficiary or beneficiaries (or the beneficiary or beneficiaries of his surviving spouse) which will be payable for the life of such beneficiary or beneficiaries (or for a term certain not extending beyond the life expectancy of such beneficiary or beneficiaries) and which annuity will be immediately distributed to such beneficiary or beneficiaries. The preceding sentence shall have no application if distributions over a term certain commenced before the death of the individual for whose benefit the trust was maintained and the term certain is for a period permitted under paragraph (6).

"(b) Individual Retirement Annuity.—For purposes of this section, the term 'individual retirement annuity'

means an annuity contract issued by an insurance company which meets the following requirements:

"(1) The contract is not transferable by the owner.

"(2) The annual premium under the contract will not exceed $1,500, and any refund of premiums will be applied before the close of the calendar year following the year of the refund toward the payment of future premiums or the purchase of additional benefits.

"(3) The entire interest of the owner will be distributed to him not later than the close of his taxable year in which he attains age 70½, or will be distributed, in accordance with regulations prescribed by the Secretary or his delegate, over—

"(A) the life of such owner or the lives of such owner and his spouse, or

"(B) a period not extending beyond the life expectancy of such owner or the life expectancy of such owner and his spouse.

"(4) If the owner dies before his entire interest has been distributed to him, or if distribution has been commenced as provided in paragraph (3) to his surviving spouse and such surviving spouse dies before the entire interest has been distributed to such spouse, the entire interest (or the remaining part of such interest if distribution thereof has commenced) will, within 5 years after

his death (or the death of the surviving spouse) be distributed, or applied to the purchase of an immediate annuity for his beneficiary or beneficiaries (or the beneficiary or beneficiaries of his surviving spouse) which will be payable for the life of such beneficiary or beneficiaries (or for a term certain not extending beyond the life expectancy of such beneficiary or beneficiaries) and which annuity will be immediately distributed to such beneficiary or beneficiaries. The preceding sentence shall have no application if distributions over a term certain commenced before the death of the owner and the term certain is for a period permitted under paragraph (3).

"(5) The entire interest of the owner is nonforfeitable.

Such term does not include such an annuity contract for any taxable year of the owner in which it is disqualified on the application of subsection (e) or for any subsequent taxable year.

"(c) ACCOUNTS ESTABLISHED BY EMPLOYERS AND CERTAIN ASSOCIATIONS OF EMPLOYEES.—A trust created or organized in the United States by an employer for the exclusive benefit of his employees or their beneficiaries, or by an association of employees (which may include employees within the meaning of section 401 (c) (1)) for the exclusive

benefit of its members or their beneficiaries, shall be treated as an individual retirement account (described in subsection (a)), but only if the written governing instrument creating the trust meets the following requirements:

"(1) The trust satisfies the requirements of paragraphs (1) through (7) of subsection (a).

"(2) There is a separate accounting for the interest of each employee or member.

The assets of the trust may be held in a common fund for the account of all individuals who have an interest in the trust.

"(d) Tax Treatment of Distributions.—

"(1) In general.—Except as otherwise provided in this subsection, any amount paid or distributed out of an individual retirement account or under an individual retirement annuity, shall be included in gross income by the payee for the taxable year in which the payment or distribution is received. The basis of any person in such an account or annuity shall be zero.

"(2) Distributions of annuity contracts.—Paragraph (1) shall not apply to any annuity contract which meets the requirements of paragraphs (1), (3), (4), and (5) of subsection (b) and which is distributed from an individual retirement account. Section 72 shall apply to any such annuity contract, and for purposes of section 72 the investment in such contract shall be zero.

"(3) ROLLOVER CONTRIBUTION.—An amount is described in this paragraph as a rollover contribution if it meets the requirements of subparagraphs (A) and (B).

"(A) IN GENERAL.—Paragraph (1) shall not apply to any amount paid or distributed out of an individual retirement account or individual retirement annuity to an individual if—

"(i) such individual is a person for whose benefit the account is maintained, and

"(ii) the entire amount received (including any property other than money) is paid into an individual retirement account or individual retirement annuity (created for such individual's benefit) not later than the 60th day after the day on which he receives the payment or distribution.

"(B) LIMITATION.—This subsection shall not apply to any amount received by an individual from an individual retirement account or individual retirement annuity if at any time during the 3-year period ending on the day of such receipt such individual received any other amount from an individual retirement account or individual retirement

annuity which was not includible in his gross income because of the application of this paragraph.

"(4) EXCESS CONTRIBUTIONS RETURNED BEFORE DUE DATE OF RETURN.—Paragraph (1) shall not apply to the distribution of any contribution paid during a taxable year to an individual retirement account or for an individual retirement annuity to the extent that such contribution exceeds the amount allowable as a deduction under section 219 if—

"(A) such distribution is received on or before the day prescribed by law (including extensions) for filing such individual's return for such taxable year,

"(B) no deduction is allowed under section 219 with respect to such excess contribution, and

"(C) such distribution is accompanied by the amount of net income attributable to such excess contribution.

Any net income described in subparagraph (C) shall be included in the gross income of the individual for the taxable year in which received.

"(e) TAX TREATMENT OF ACCOUNTS AND ANNUITIES.—

"(1) EXEMPTION FROM TAX.—Any individual re-

tirement account shall be exempt from taxation under this subtitle unless such account has ceased to be an individual retirement account by reason of paragraph (2). Notwithstanding the preceding sentence, any such account shall be subject to the taxes imposed by section 511 (relating to imposition of tax on unrelated business income of charitable, etc., organizations).

"(2) LOSS OF EXEMPTION OF ACCOUNT WHERE EMPLOYEE ENGAGES IN PROHIBITED TRANSACTION.—

"(A) IN GENERAL.—If during any taxable year of the individual for whose benefit any individual reitrement account was established there is any transaction described in subsection (b) or (g) of section 503, such account shall cease to be an individual retirement account as of the first day of such taxable year. For purposes of this paragraph—

"(i) the individual for whose benefit any account was established shall be treated as the creator of such account, and

"(ii) the separate account for any individual within an individual retirement account maintained by an employer or association of employees shall be treated as a separate individual retirement account.

"(B) Account treated as distributing all its assets.—In any case in which any account ceases to be an individual retirement account by reason of subparagraph (A) as of the first day of any taxable year, paragraph (1) of subsection (d) shall apply as if there were a distribution on such first day in an amount equal to the fair market value (on such first day) of all assets in the account (on such first day).

"(3) Effect of borrowing on annuity contract.—If during any taxable year the owner of an individual retirement annuity borrows any money under or by use of such contract, the contract shall cease to be an individual retirement annuity as of the first day of such taxable year. Such owner shall include in gross income for such year an amount equal to the fair market value of such contract as of such first day.

"(4) Loss of employer deductions where employer engages in prohibited transaction.—If during any taxable year of an employer there is any transaction described in subsection (b) or (g) of section 503 with respect to any individual retirement account maintained by such employer, all deductions of such employer for compensation paid or accrued for

such taxable year and for all prior taxable years shall be disallowed to the extent of contributions to such individual retirement account paid during such year. For purposes of this paragraph, the employer shall be treated as the creator of each individual retirement account maintained by him.

"(f) PENALTY TAX ON CERTAIN AMOUNTS INCLUDED IN GROSS INCOME BEFORE AGE 59½.—

"(1) EARLY DISTRIBUTIONS FROM AN INDIVIDUAL RETIREMENT ACCOUNT, ETC.—If a distribution from an individual retirement account or under an individual retirement annuity to the individual for whose benefit such account or annuity was established is made before such individual attains age 59½, his tax under this chapter for the taxable year in which such distribution is received shall be increased by an amount equal to 10 percent of the amount of the distribution which is includible in his gross income for such taxable year.

"(2) DISQUALIFICATION CASES.—If an amount is includible in gross income for a taxable year under subsection (e) and the taxpayer has not attained age 59½ before the beginning of such taxable year, his tax under this chapter for such taxable year shall be increased by an amount equal to 10 percent of such amount so required to be included in his gross income.

"(3) Disability cases.—Paragraphs (1) and (2) shall not apply if the amount paid or distributed, or the disqualification of the account or annuity under subsection (e), is attributable to the taxpayer becoming disabled within the meaning of section 72(m)(7).

"(g) Community Property Laws.—This section shall be applied without regard to the community property laws of any State.

"(h) Custodial Accounts.—For purposes of this section, a custodial account shall be treated as a trust if the assets of such account are held by a bank (as defined in section 401(d)(1) or another person who demonstrates, to the satisfaction of the Secretary or his delegate, that the manner in which he will hold the assets will be consistent with the requirements of this section. For purposes of this title, in the case of a custodial account treated as a trust by reason of the preceding sentence, the custodian of such account shall be treated as the trustee thereof.

"(i) Reports.—The trustee of an individual retirement account or the issuer of an individual retirement annuity shall submit to the Secretary or his delegate such reports regarding contributions to such account or annuity distributions from such account or annuity, and other matters relating to such account or annuity as may be required by regulations prescribed by the Secretary or his delegate.

Such reports shall be filed at such time and in such manner as may be required by such regulations.

"(j) CROSS REFERENCES.—

"(1) For tax on excess contributions to individual retirement accounts or annuities, see section 4973.

"(2) For tax on certain accumulations in individual retirement accounts or annuities, see section 4974."

(c) RETIREMENT BONDS.—Subpart A of part I of subchapter D of chapter 1 (relating to retirement plans) is amended by inserting after section 408 the following new section:

"SEC. 409. RETIREMENT BONDS.

"(a) RETIREMENT BOND.—For purposes of this section and section 219 (a), the term 'retirement bond' means a bond issued under the Second Liberty Bond Act, as amended, which by its terms, or by regulations prescribed by the Secretary under such Act—

"(1) provides for payment of interest, or investment yield, only on redemption;

"(2) provides that no interest, or investment yield, is payable if the bond is redeemed within 12 months after the date of its issuance;

"(3) provides that it ceases to bear interest, or provide investment yield, on the earlier of—

"(A) the date on which the individual in whose name it is purchased (hereinafter in this sec-

tion referred to as the 'registered owner') attains age $70\frac{1}{2}$; or

"(B) 5 years after the date on which the registered owner dies, but not later than the date on which he would have attained the age $70\frac{1}{2}$ had he lived;

"(4) may be redeemed before the death of the registered owner only if such owner—

"(A) has attained age $59\frac{1}{2}$,

"(B) has become disabled (within the meaning of section 72 (m) (7)), or

"(C) tenders the bond for redemption within 12 months after the date of its issuance; and

"(5) is not transferable.

"(b) INCOME TAX TREATMENT OF BONDS.—

"(1) IN GENERAL.—Except as otherwise provided in this subsection, on the redemption of a retirement bond the entire proceeds shall be included in the gross income of the taxpayer entitled to the proceeds on redemption. If the registered owner has not tendered it for redemption before the close of the taxable year in which he attains age $70\frac{1}{2}$, such individual shall include in his gross income for such taxable year the amount of proceeds he would have received if the bond had been

redeemed at age $70\frac{1}{2}$. The provisions of section 72 (relating to annuities) and section 1232 (relating to bonds and other evidences of indebtedness) shall not apply to a retirement bond.

"(2) BASIS.—The basis of a retirement bond shall be zero, whether or not the registered owner was allowed a deduction under section 219 for the amount paid for the bond.

"(3) EXCEPTIONS.—

"(A) REDEMPTION WITHIN 12 MONTHS.—If a retirement bond is redeemed within 12 months after the date of its issuance, the proceeds shall be excluded from gross income if no deduction is allowed under section 219 on account of the purchase of such bond.

"(B) REDEMPTION AFTER AGE $70\frac{1}{2}$.—If a retirement bond is redeemed after the close of the taxable year in which the registered owner attains age $70\frac{1}{2}$, there shall be included in gross income on the redemption of the bond only the amount by which the proceeds on redemption exceed the amount included in his gross income for such taxable year."

(d) EXCISE TAX ON EXCESS CONTRIBUTIONS.—Chapter 43 (relating to qualified pension, etc., plans) is

amended by inserting after section 4972 the following new section:

"SEC. 4973. TAX ON EXCESS CONTRIBUTIONS TO INDIVIDUAL RETIREMENT ACCOUNTS.

"(a) TAX IMPOSED.—In the case of—

"(1) any individual retirement account (within the meaning of section 408 (a)), or

"(2) any individual retirement annuity (within the meaning of section 408 (b)),

established for the benefit of any individual, there is hereby imposed for each taxable year a tax in an amount equal to 6 percent of the amount of the excess contributions to such individual's accounts or annuities (determined as of the close of the taxable year). The tax imposed by this subsection shall be paid by such individual.

"(b) EXCESS CONTRIBUTIONS.—For purposes of this subsection, in the case of individual retirement accounts or individual retirement annuities, the term 'excess contributions' means the sum of—

"(1) the excess (if any) of—

"(A) the amount contributed for the taxable year to the accounts or for the annuities (other than a rollover contribution described in section 402 (a) (5), 403 (a) (4), or 408 (d) (3)), over

"(B) the amount allowable as a deduction under section 219 for such contributions, and

"(2) the amount determined under this paragraph for the preceding taxable year, reduced by the excess (if any) of the maximum amount allowable as a deduction under section 219 for the taxable year over the amount contributed to the accounts or for the annuities for the taxable year and reduced by the sum of the distributions out of the account (for the taxable year and all prior taxable years) which were included in the gross income of the payee under section 408 (d) (1). For purposes of this paragraph, any contribution which is distributed out of the individual retirement account or individual retirement annuity in a distribution to which section 408 (d) (4) applies shall be treated as an amount not contributed."

(e) Excise Tax on Excessive Accumulations.—Chapter 43 is amended by inserting after section 4973 the following new section:

"SEC. 4974. EXCISE TAX ON CERTAIN ACCUMULATIONS IN INDIVIDUAL RETIREMENT ACCOUNTS OR ANNUITIES.

"(a) Imposition of Tax.—If, in the case of an individual retirement account or individual retirement annuity, the amount distributed during the taxable year of

the payee is less than the minimum amount required to be distributed under section 408 (a) (6) or (7), or 408 (b) (3) or (4) during such year, there is hereby imposed a tax equal to 50 percent of the amount by which the minimum amount required to be distributed during such year exceeds the amount actually distributed during the year. The tax imposed by this section shall be paid by such payee.

"(b) REGULATIONS.—For purposes of this section, the minimum amount required to be distributed during a taxable year under section 408 (a) (6) or (7), or 408 (b) (3) or (4) shall be determined under regulations prescribed by the Secretary or his delegate."

(f) PENALTY FOR FAILURE TO PROVIDE REPORTS ON INDIVIDUAL RETIREMENT ACCOUNTS.—Subchapter B of chapter 68 (relating to assessable penalties) is amended by adding at the end thereof the following new section:

"SEC. 6693. FAILURE TO PROVIDE REPORTS ON INDIVIDUAL RETIREMENT ACCOUNTS OR ANNUITIES.

"(a) The person required by section 408 (i) to file a report regarding an individual retirement account or individual retirement annuity at the time and in the manner required by section 408 (i) shall pay a penalty of $10 for each failure unless it is shown that such failure is due to reasonable cause.

"(b) DEFICIENCY PROCEDURES NOT TO APPLY.—Subchapter B of chapter 63 (relating to deficiency procedures for income, estate, gift, and certain excise taxes) shall not apply to the assessment or collection of any penalty imposed by subsection (a)."

(g) CONFORMING AMENDMENTS.—

(1) Section 37(c)(1) (defining retirement income) is amended—

(A) by adding at the end of subparagraph (E) the following: "retirement bonds described in section 409, or".

(B) by adding the following new subparagraph:

"(F) an individual retirement account described in section 408(a) or an individual retirement annuity described in section 408(b), or".

(2) The second sentence of section 46(a)(3) and the second sentence of section 50A(a)(3) are each amended by striking out "tax preferences)," and inserting in lieu thereof "tax preferences), section 408(e) (relating to additional tax on income from certain retirement accounts),".

(3) The third sentence of section 901(a) is amended by striking out "tax preferences)," and inserting in lieu thereof "tax preferences, against the tax im-

posed for the taxable year by section 408(e) (relating to additional tax on income from certain retirement accounts),".

(4) Subparagraph (A) of section 56(a)(2) and paragraph (1) of section 56(c) are each amended by striking out "531" and inserting in lieu thereof "408(f), 531,".

(5) Section 402(a) (relating to taxability of beneficiaries of exempt trust) is amended by inserting after paragraph (4) the following new paragraph:

"(5) TRANSFER TO INDIVIDUAL RETIREMENT ACCOUNT.—In the case of an employees' trust described in section 401(a) which is exempt from tax under section 501(a), if—

"(A) the balance to the credit of an employee is paid to him in one or more distributions within 1 taxable year of the employee on account of his separation from the service,

"(B) the employee transfers all the property he receives in such distributions to an individual retirement account described in section 408(a) or to an individual retirement annuity described in section 408(b) on or before the 60th day after the day on which he received such property, to the extent the fair market value of such property exceeds the

amount referred to in subsection (e) (1) (D) (i), and

"(C) the amount so transferred consists of the property (other than money) distributed, to the extent that the fair market value of such property does not exceed the amount required to be transferred pursuant to subparagraph (B),

then such distributions shall not be includible in gross income for the year in which paid. Such transfer shall be treated as a rollover contribution as described in section 408 (d) (3)."

(6) Section 403 (a) (relating to taxation of employee annuities) is amended by adding after paragraph (3) the following new paragraph:

"(4) TRANSFER TO INDIVIDUAL RETIREMENT ACCOUNT.—In the case of an employees' trust described in section 401 (a) which is exempt from tax under section 501 (a), if—

"(A) the balance to the credit of an employee is paid to him in one or more distributions within 1 taxable year of the employee on account of his separation from the service,

"(B) the employee transfers all the property he receives in such distributions to an individual account described in section 408 (a) or to an indi-

vidual retirement annuity described in section 408 (b) on or before the 60th day after the day on which he received such property to the extent the fair market value of such property exceeds the amount referred to in subsection (e) (4) (D) (i), and

"(C) the amount so transferred consists of the property distributed, to the extent that the fair market value of such property does not exceed the amount required to be transferred pursuant to subparagraph (B),

then such transfer shall be treated as a rollover contribution (within the meaning of section 408 (d) (3), and such distributions shall not be includible in gross income for the year in which paid."

(7) Section 3401 (a) (12) (relating to exemption from collection of income tax at source on certain wages) is amended by adding at the end thereof the following new subparagraph:

"(D) for a payment described in section 219 (a) if, at the time of such payment, it is reasonable to believe that the employee will be entitled to a deduction under such section for such payment; or".

(8) Section 6047 (relating to information relating to certain trusts and annuity and bond purchase plans)

is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

"(d) OTHER PROGRAMS.—To the extent provided by regulations prescribed by the Secretary or his delegate, the provisions of this section shall be applicable with respect to any payment described in section 219 (a) and to transactions of any trust described in section 408 (a) or under an individual retirement annuity described in section 408 (b)."

(9) PENSION PLAN RESERVES.—Section 805 (d) (1) (relating to definition of pension plan reserves) is amended by striking out "or" at the end of subparagraph (C), by striking out "foregoing." at the end of subparagraph (D) and inserting in lieu thereof "foregoing; or", and by adding at the end thereof the following new subparagraph:

"(E) purchased under contracts entered into with trusts which (as of the time the contracts were entered into) were deemed to be individual retirement accounts described in section 408 (a) or under contracts entered into with individual retirement annuities described in section 408 (b)."

(10) TREATMENT OF DISTRIBUTION FROM INDIVIDUAL RETIREMENT ACCOUNTS.—Section 72 (relating to annuities) is amended—

(A) by inserting after "501 (a)" in subsection (m) (4) (A) ", an individual retirement account described in section 408 (a), an individual retirement annuity described in section 408 (b)".

(B) by striking out at the end of subsection (m) (6) "401 (c) (3)" and inserting in lieu thereof "401 (c) (3) and includes an individual for whose benefit an individual retirement account or annuity described in section 408 (a) or (b) is maintained".

(h) Clerical Amendments.—

(1) The table of sections for part VII of subchapter B of chapter 1 is amended by striking out the item relating to section 219 and inserting in lieu thereof the following:

"Sec. 219. Retirement savings.
"Sec. 220. Cross references."

(2) The table of sections for subpart A of part I of subchapter D of chapter 1 is amended by adding at the end thereof the following:

"Sec. 408. Individual retirement accounts.
"Sec. 409. Retirement bonds.".

(3) The table of sections for chapter 43 is amended by inserting after the item relating to section 4972 the following new items:

"Sec. 4973. Tax on excess contributions to individual retirement accounts.
"Sec. 4974. Tax on certain accumulations in individual retirement accounts.".

(i) Effective Date.—The amendments made by subsection (a) shall apply to taxable years beginning after December 31, 1973. The amendments made by this section (other than subsection (a)) shall take effect January 1, 1974.

SEC. 2003. LIMITATIONS ON BENEFITS AND CONTRIBUTIONS.

(a) Plan Requirements.—

(1) Section 401 (a) (relating to requirements for qualification) is amended by inserting after paragraph (15) the following new paragraph:

"(16) A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides for benefits or contributions which do not exceed the limitations of section 415."

(2) Subpart B of part I of subchapter D of chapter 1 is amended by inserting after section 414 the following new section:

"SEC. 415. LIMITATIONS ON BENEFITS AND CONTRIBUTIONS UNDER QUALIFIED PLANS.

"(a) General Rule.—

"(1) Trusts.—A trust which is a part of a pension, profit-sharing, or stock bonus plan shall not constitute a qualified trust under section 401 (a) if—

"(A) in the case of a defined benefit plan, the

plan provides for the payment of benefits with respect to a participant which exceed the limitation of subsection (b),

"(B) in the case of a defined contribution plan, under the plan contributions and other additions with respect to any participant for any taxable year exceed the limitation of subsection (c), or

"(C) in any case in which an individual is a participant in both a defined benefit plan and a defined contribution plan maintained by the employer, the trust has been disqualified under subsection (e)(5).

"(2) SECTION APPLIES TO CERTAIN ANNUITIES AND ACCOUNTS.—In the case of—

"(A) an employee annuity plan described in section 403(a),

"(B) any annuity contract described in section 403(b),

"(C) an individual retirement account described in section 408(a), or

"(D) an individual retirement annuity described in section 408(b),

such contract, annuity plan, account, or annuity shall not be considered to be described in section 403(a),

403 (b), 408 (a), or 408 (b), as the case may be, unless it satisfies the requirements of subparagraph (A) or subparagraph (B) of paragraph (1), whichever is appropriate, and has not been disqualified under subsection (e) (5).

"(b) LIMITATION FOR DEFINED BENEFIT PLANS.—

"(1) IN GENERAL.—Benefits with respect to a participant exceed the limitation of this subsection if, when expressed as an annual benefit (within the meaning of paragraph (2)), such annual benefit is greater than the lesser of—

"(A) $75,000, or

"(B) 100 percent of the participant's average compensation for his high 3 years.

"(2) ANNUAL BENEFIT.—

"(A) IN GENERAL.—For purposes of paragraph (1), the term 'annual benefit' means a benefit payable annually in the form of a straight life annuity (with no ancillary benefits) under a plan to which employees do not contribute.

"(B) ADJUSTMENT FOR CERTAIN OTHER FORMS OF BENEFITS OR FOR EMPLOYEE CONTRIBUTIONS.—If the benefit under the plan is payable in any form other than the form set forth in subparagraph (A), or if the employees contribute to the

plan, the determination as to whether the limitation set forth in paragraph (1) has been satisfied shall be made, in accordance with regulations prescribed by the Secretary or his delegate, by adjusting such benefit so that it is equivalent to the benefit referred to in subparagraph (A). For purposes of this subparagraph, any ancillary benefit which is not directly related to retirement income benefits shall not be taken into account; and that portion of any joint and survivor feature which constitutes a qualified joint and survivor annuity shall not be taken into account.

"(C) ADJUSTMENT TO $75,000 LIMIT WHERE BENEFIT BEGINS BEFORE AGE 55.—If the retirement income benefit under the plan begins before age 55, the determination as to whether the $75,000 limitation set forth in paragraph (1)(A) has been satisfied shall be made, in accordance with regulations prescribed by the Secretary or his delegate, by adjusting such benefit so that it is equivalent to such a benefit beginning at age 55.

"(D) QUALIFIED JOINT AND SURVIVOR BENEFIT.—For purposes of this paragraph, the term 'qualified joint and survivor benefit' means a form of benefit under which (i) there is a joint and sur-

vivor annuity for the benefit of the participant and his spouse, and (ii) the benefit payable to the survivor is not greater than the benefit which would be payable if both the participant and his spouse were alive.

"(3) AVERAGE COMPENSATION FOR HIGH 3 YEARS.—For purposes of paragraph (1), a participant's high 3 years shall be the period of consecutive calendar years (not more than 3) during which the participant was both an active participant in the plan and had the greatest aggregate compensation from the employer. In the case of an employee within the meaning of section 401 (c) (1), the preceding sentence shall be applied by substituting for 'compensation from the employer' the participant's earned income (within the meaning of section 401 (c) (2) but determined without regard to any exclusion under section 911).

"(4) TOTAL ANNUAL BENEFITS NOT IN EXCESS OF $10,000.—Notwithstanding the preceding provisions of this subsection, the benefits payable with respect to a participant under any defined benefit plan shall be deemed not to exceed the limitation of this subsection if—

"(A) the retirement benefits payable with respect to such participant under such plan and under

all other defined benefit plans of the employer do not exceed $10,000 for the plan year, and do not exceed $10,000 for any prior plan year, and

"(B) the employer has not at any time maintained a defined contribution plan in which the participant participated.

"(5) REDUCTION FOR SERVICE LESS THAN 10 YEARS.—In the case of an employee who has less than 10 years of service with the employer, the limitation referred to in paragraph (1), and the limitation referred to in paragraph (4), shall be the limitation determined under such paragraph (without regard to this paragraph), multiplied by a fraction, the numerator of which is the number of years (or part thereof) of service with the employer and the denominator of which is 10.

"(c) LIMITATION FOR DEFINED CONTRIBUTION PLANS.—

"(1) IN GENERAL.—Contributions and other additions with respect to a participant exceed the limitation of this subsection if, when expressed as an annual addition to the participant's account (within the meaning of paragraph (2)), such annual addition is greater than the lesser of—

"(A) $25,000, or

"(B) 25 percent of the participant's compensation.

"(2) ANNUAL ADDITION.—For purposes of paragraph (1), the term 'annual addition' means the sum for any year of—

"(A) employer contributions,

"(B) the lesser of—

"(i) the amount of the employee contributions in excess of 6 percent of his compensation, or

"(ii) one-half of the employee contributions, and

"(C) forfeitures.

"(3) PARTICIPANT'S COMPENSATION.—For purposes of paragraph (1), the term 'participant's compensation' means the compensation of the participant from the employer for the year. In the case of an employee within the meaning of section 401 (c) (1), the preceding sentence shall be applied by substituting for 'compensation of the participant from the employer' the participant's earned income (within the meaning of section 401 (c) (2) but determined without regard to any exclusion under section 911).

"(d) COST-OF-LIVING ADJUSTMENTS.—

"(1) IN GENERAL.—The Secretary or his delegate shall adjust annually—

"(A) the $75,000 amount in subsection (b) (1) (A),

"(B) the $25,000 amount in subsection (c) (1) (A), and

"(C) in the case of a participant who is separated from the service, the amount taken into account under subsection (b) (1) (B),

for increases in the cost of living in accordance with regulations prescribed by the Secretary or his delegate. Such regulations shall provide for adjustment procedures which are similar to the procedures used to adjust primary insurance amounts under section 215 (i) (2) (A) of the Social Security Act.

"(2) BASE PERIODS.—The base period taken into account—

"(A) for purposes of subparagraphs (A) and (B) of paragraph (1) shall be the calendar quarter beginning October 1, 1973, and

"(B) for purposes of subparagraph (C) of paragraph (1) shall be the last calendar quarter of the calendar year before the calendar year in which the participant is separated from the service.

"(e) LIMITATION IN CASE OF DEFINED BENEFIT PLAN AND DEFINED CONTRIBUTION PLAN FOR SAME EMPLOYEE.—

"(1) IN GENERAL.—In any case in which an individual is a participant in both a defined benefit plan and a defined contribution plan maintained by the employer, the sum of the defined benefit plan fraction and the defined contribution plan fraction for any year shall not exceed 1.4.

"(2) DEFINED BENEFIT PLAN FRACTION.—For purposes of this subsection, the defined benefit plan fraction for any year is a fraction—

"(A) the numerator of which is the projected benefit of the participant under the plan (determined as of the close of the year), and

"(B) the denominator of which is the projected benefit of the participant under the plan (determined as of the close of the year) if the plan provided the maximum benefit allowable under subsection (b).

For purposes of this paragraph, the term 'benefit' means an annual benefit as defined in subsection (b) (2).

"(3) DEFINED CONTRIBUTION PLAN FRACTION.—For purposes of this subsection, the defined contribution plan fraction for any year is a fraction—

"(A) the numerator of which is the sum of the annual additions to the participant's account as of the close of the year, and

"(B) the denominator of which is the sum of the maximum amount of annual additions to such account which could have been made under subsection (c) for such year and for each prior year of service with the employer.

"(4) SPECIAL TRANSITION RULES FOR DEFINED CONTRIBUTION FRACTION.—In applying paragraph (3) with respect to years beginning before January 1, 1976—

"(A) the aggregate amount taken into account under paragraph (3) (A) shall not exceed the aggregate amount taken into account under paragraph (3) (B), and

"(B) the amount taken into account under subsection (c) (2) (B) (i) for any year concerned shall be an amount equal to—

"(i) the excess of the aggregate amount of employee contributions for all years beginning before January 1, 1976, during which the employee was an active participant of the plan, over 10 percent of the employee's aggregate compensation for all such years, multiplied by

"(ii) a fraction the numerator of which is 1 and the denominator of which is the number of years beginning before January 1, 1976, during which the employee was an active participant in the plan.

Employee contributions made on or after October 2, 1973, shall be taken into account under subparagraph (B) of the preceding sentence only to the extent that the amount of such contributions does not exceed the maximum amount of contributions permissible under the plan as in effect on October 2, 1973.

"(5) DISQUALIFICATION OF TRUSTS AND PLANS.—If, but for this paragraph, the sum referred to in paragraph (1) would exceed 1.4, the Secretary or his delegate shall, under regulations, disqualify one or more trusts, one or more plans, or both, until such sum does not exceed 1.4. In addition to taking into account such other factors as may be necessary to carry out the purposes of this subsection, the regulations prescribed under this paragraph shall provide that—

"(A) no plan which has terminated shall be disqualified until all other plans have been disqualified, and

"(B) the plan (or combination of plans) hav-

ing the least number of participants shall be disqualified first.

"(6) SPECIAL RULES FOR SECTIONS 403(b) AND 408.—For purposes of this subsection, any annuity contract described in section 403 (b), any individual retirement account described in section 408 (a), and any individual retirement annuity described in section 408 (b) for the benefit of a participant shall be treated as a defined contribution plan maintained by each employer with respect to which the participant has the control required under subsection (b) or (c) of section 414 (as modified by subsection (h)). In the case of any annuity contract described in section 403 (b), the amount of the contribution disqualified by reason of paragraph (5) of this subsection shall reduce the exclusion allowance provided in section 403 (b) (2).

"(f) COMBINING OF PLANS.—

"(1) IN GENERAL.—For purposes of applying the limitations of subsections (b), (c), and (e) (other than subsection (e) (5))—

"(A) all defined benefit plans (whether or not terminated) of an employer shall be treated as one defined benefit plan, and

"(B) all defined contribution plans (whether

or not terminated) of an employer shall be treated as one defined contribution plan.

"(2) ANNUAL COMPENSATION TAKEN INTO ACCOUNT FOR DEFINED BENEFIT PLANS.—If the employer has more than one defined benefit plan—

"(A) subsection (b) (1) (B) shall be applied separately with respect to each such plan, but

"(B) in applying subsection (b) (1) (B) to the aggregate of such defined benefit plans for purposes of this subsection, the high 3 years of compensation taken into account shall be the period of consecutive calendar years (not more than 3) during which the individual had the greatest aggregate compensation from the employer.

"(g) PAYMENT OF ADDITIONAL BENEFITS.—Nothing in this section or section 412 shall be construed to require the disqualification of any plan solely by reason of the provision of benefits for any individual in addition to the benefits which may be provided under the limitations of subsections (b), (c), and (e) if the contributions of the employer for the purpose of providing such additional benefits are not allowable as a deduction to the employer before they are includible in the gross income of the individual.

"(h) 50 PERCENT CONTROL.—For purposes of applying subsections (b) and (c) of section 414 to this section,

the phrase 'more than 50 percent' shall be substituted for the phrase 'at least 80 percent' each place it appears in section 1563 (a) (1).

"(i) Records Not Available for Past Periods.—Where for the period before January 1, 1976, or (if later) the first day of the first plan year of the plan, the records necessary for the application of this section are not available, the Secretary or his delegate may by regulations prescribe alternative methods for determining the amounts to be taken into account for such period."

(b) Limit on Employer Deductions.—The second sentence of section 404 (a) (3) (A) (relating to limits on deductible contributions) is amended by striking out "beneficiaries under the plan." and inserting in lieu thereof "beneficiaries under the plan, but the amount so deductible under this sentence in any one succeeding taxable year together with the amount so deductible under the first sentence of this subparagraph shall not exceed 25 percent of the compensation otherwise paid or accrued during such taxable year to the beneficiaries under the plan."

(c) Certain Annuity and Bond Purchase Plans.—

(1) Section 404 (a) (2) (relating to the general rule for deduction for employee annuities) is amended

by striking out "(15)" and inserting in lieu thereof "(15), (16), and (19)".

(2) Section 405(a)(1) (relating to requirements for qualified bond purchase plans) is amended by striking out "and (8)," and inserting in lieu thereof "(8), (16), and (19)".

(3) Section 805(d)(1)(C) (relating to pension plan reserves) is amended by striking out "and (15)" and inserting in lieu thereof "(15), (16), and (19)".

(4) Section 403(b)(2) (relating to exclusion allowance) is amended by adding at the end thereof the following new sentence: "The exclusion allowance for any employee for the taxable year shall be reduced to the maximum amount not disqualified by section 415(e) (relating to limitations on benefits and contributions under qualified plans)."

(d) EFFECTIVE DATE.—

(1) GENERAL RULE.—The amendments made by this section shall apply to contributions made or benefits accrued in years beginning after December 31, 1975.

(2) TRANSITION RULE FOR DEFINED BENEFIT PLANS.—In the case of an individual who was an active participant in a defined benefit plan on October 2, 1973, if—

(A) the annual benefit (within the meaning of

section 415 (b) (2) of the Internal Revenue Code of 1954) payable to such participant on retirement does not exceed 100 percent of his annual rate of compensation on such date, and

(B) such annual benefit is no greater than the annual benefit which would have been payable to such participant on retirement if (i) all the terms and conditions of such plan in existence on such date had remained in existence until such retirement, and (ii) his compensation taken into account for any period after October 2, 1973, had not exceeded his annual rate of compensation on such date,

then such annual benefit shall be treated as not exceeding the limitation of subsection (b) of section 415 of the Internal Revenue Code of 1954.

SEC. 2004. TAXATION OF CERTAIN LUMP SUM DISTRIBUTIONS.

(a) TREATMENT OF TOTAL DISTRIBUTIONS.—Section 402 (e) (relating to certain plan terminations) is amended to read as follows:

"(e) TAX ON LUMP SUM DISTRIBUTIONS.—

"(1) IMPOSITION OF SEPARATE TAX ON LUMP SUM DISTRIBUTIONS.—

"(A) SEPARATE TAX.—There is hereby imposed a tax (in the amount determined under subparagraph (B)) on the ordinary income portion of a lump sum distribution.

"(B) AMOUNT OF TAX.—The amount of tax imposed by subparagraph (A) for any taxable year shall be an amount equal to the amount of the initial separate tax for such taxable year multiplied by a fraction, the numerator of which is the ordinary income portion of the lump sum distribution for the taxable year and the denominator of which is the total taxable amount of such distribution for such year.

"(C) INITIAL SEPARATE TAX.—The initial separate tax for any taxable year is an amount equal to 10 times the tax which would be imposed by subsection (c) of section 1 if the recipient were an individual referred to in such subsection and the taxable income were an amount equal to one-tenth of the excess of—

"(i) the total taxable amount of the lump sum distribution for the taxable year, over

"(ii) the minimum distribution allowance.

"(D) MINIMUM DISTRIBUTION ALLOWANCE.—For purposes of this paragraph, the mini-

mum distribution allowance for the taxable year is an amount equal to—

"(i) the lesser of $10,000 or one-half of the total taxable amount of the lump sum distribution for the taxable year, reduced (but not below zero) by

"(ii) 20 percent of the amount (if any) by which such total taxable amount exceeds $20,000.

"(E) LIABILITY FOR TAX.—The recipient shall be liable for the tax imposed by this paragraph.

"(2) MULTIPLE DISTRIBUTIONS AND DISTRIBUTIONS OF ANNUITY CONTRACTS.—In the case of any recipient of a lump sum distribution for the taxable year with respect to whom during the 6-taxable-year period ending on the last day of the taxable year there has been one or more other lump sum distributions after December 31, 1973, in computing the tax imposed by paragraph (1)(A), the total taxable amounts of all such distributions during such 6-taxable-year period shall be aggregated, but the amount of tax so computed shall be reduced by the amount of the tax imposed by paragraph (1)(A) paid with respect to such other distributions. For purposes of this paragraph, a beneficiary of a trust to which

a lump sum distribution is made shall be treated as the recipient of such distribution if the beneficiary is an employee (including an employee within the meaning of section 401(c)(1)) with respect to the plan under which the distribution is made or if the beneficiary is treated as the owner of such trust for purposes of subpart E of part I of subchapter J. In the case of the distribution of an annuity contract, the taxable amount of such distribution shall be deemed to be the fair market value of the contract, determined on the date of such distribution. The Secretary or his delegate shall prescribe such regulations as may be necessary to carry out the purposes of this paragraph.

"(3) ALLOWANCE OF DEDUCTION.—The ordinary income portion of a lump sum distribution for the taxable year shall be allowed as a deduction from gross income for such taxable year, but only to the extent included in the taxpayer's gross income for such taxable year.

"(4) DEFINITIONS AND SPECIAL RULES.—

"(A) LUMP SUM DISTRIBUTION.—For purposes of this section and section 403, the term 'lump sum distribution' means the distribution or payment within one taxable year of the recipient of the balance to the credit of an employee which becomes payable to the recipient—

"(i) on account of the employee's death,

"(ii) after the employee attains age $59\frac{1}{2}$,

"(iii) on account of the employee's separation from the service, or

"(iv) after the employee has become disabled (within the meaning of section 72 (m) (7))

from a trust which forms a part of a plan described in section 401 (a) and which is exempt from tax under section 501 or from a plan described in section 403 (a) (2). Clause (iii) of this subparagraph shall be applied only with respect to an individual who is an employee without regard to section 401 (c) (1), and clause (iv) shall be applied only with respect to an employee within the meaning of section 401 (c) (1). For purposes of this subparagraph, a distribution of an annuity contract from a trust or annuity plan referred to in the first sentence of this subparagraph shall be treated as a lump sum distribution.

"(B) ELECTION OF LUMP SUM TREATMENT.—For purposes of this section and section 403, no amount which is not an annuity contract may be treated as a lump sum distributed under subparagraph (A) unless the taxpayer elects for the taxable year

to have all such amounts received during such year so treated at the time and in the manner provided under regulations prescribed by the Secretary or his delegate. Not more than one election may be made under this subparagraph with respect to any individual after such individual has attained age $59\frac{1}{2}$. No election may be made under this subparagraph by any taxpayer other than an individual, an estate, or a trust. The preceding sentence shall apply to a trust in the case of any distribution only if—

"(i) the trust is the sole recipient of the entire balance to the credit of the employee under subparagraph (A), and

"(ii) the use of the trust device does not affect the includibility of the distribution in the gross estate of the employee.

"(C) AGGREGATION OF CERTAIN TRUSTS AND PLANS.—For purposes of determining the balance to the credit of an employee under subparagraph (A)—

"(i) all trusts which are part of a plan shall be treated as a single trust, all pension plans maintained by the employer shall be treated as a single plan, all profit-sharing plans maintained by the employer shall be treated as

a single plan, and all stock bonus plans maintained by the employer shall be treated as a single plan, and

"(ii) trusts which are not qualified trusts under section 401 (a) and annuity contracts which do not satisfy the requirements of section 404 (a) (2) shall not be taken into account.

"(D) TOTAL TAXABLE AMOUNT.—For purposes of this section and section 403, the term 'total taxable amount' means, with respect to a lump sum distribution, the amount of such distribution which exceeds the sum of—

"(i) the amounts considered contributed by the employee (determined by applying section 72 (f)), which employee contributions shall be reduced by any amounts theretofore distributed to him which were not includible in gross income, and

"(ii) the net unrealized appreciation attributable to that part of the distribution which consists of the securities of the employer corporation so distributed.

"(E) ORDINARY INCOME PORTION.—For purposes of this section, the term 'ordinary income portion' means, with respect to a lump sum distribution,

so much the total taxable amount of such distribution as is equal to the product of such total taxable amount multiplied by a fraction—

"(i) the numerator of which is the number of calendar years of active participation by the employee in such plan after December 31, 1973, and

"(ii) the denominator of which is the number of calendar years of active participation by the employee in such plan.

"(F) EMPLOYEE.—For purposes of this subsection and subsection (a) (2), except as otherwise provided in subparagraph (A), the term 'employee' includes an individual who is an employee within the meaning of section 401 (c) (1) and the employer of such individual is the person treated as his employer under section 401 (c) (4).

"(G) COMMUNITY PROPERTY LAWS.—The provisions of this subsection, other than paragraph (3), shall be applied without regard to the community property laws of any State.

"(H) MINIMUM PERIOD OF SERVICE.—This subsection shall apply to amounts distributed to an employee from or under a plan only if he has been a participant in the plan for 5 or more taxable years

before the taxable year in which such amounts are distributed.

"(I) AMOUNTS SUBJECT TO PENALTY.—This subsection shall not apply to amounts described in clause (ii) of subparagraph (A) of section 72 (m) (5) to the extent that section 72 (m) (5) applies to such amounts.

"(J) UNREALIZED APPRECIATION OF EMPLOYER SECURITIES.—In the case of a lump sum distribution including securities of the employer corporation, the amount of net unrealized appreciation of such securities and the resulting adjustments to the basis of such securities shall be determined under regulations prescribed by the Secretary or his delegate.

"(K) SECURITIES.—For purposes of this subsection, the terms 'securities' and 'securities of the employer corporation' have the respective meanings provided by subsection (a) (3)."

(b) PHASEOUT OF CAPITAL GAINS TREATMENT.—

(1) IN GENERAL.—Section 402 (a) (2) (relating to capital gains treatment for certain distributions) is amended to read as follows:

"(2) CAPITAL GAINS TREATMENT FOR PORTION OF LUMP SUM DISTRIBUTIONS.—In the case of an em-

ployee trust described in section 401 (a), which is exempt from tax under section 501 (a), so much of the total taxable amount (as defined in subparagraph (D) of subsection (e) (4)) of a lump sum distribution as is equal to the product of such total taxable amount multiplied by a fraction—

"(A) the numerator of which is the number of calendar years of active participation by the employee in such plan before January 1, 1974, and

"(B) the denominator of which is the number of calendar years of active participation by the employee in such plan,

shall be treated as a gain from the sale or exchange of a capital asset held for more than 6 months. For purposes of computing the fraction under this paragraph, the Secretary or his delegate may prescribe regulations under which plan years may be used in lieu of calendar years."

(2) Amendment of section 403.—That part of paragraph (2) (A) of section 403 (a) which follows clause (ii) thereof is amended to read as follows:

"(iii) a lump sum distribution (as defined in section 402 (e) (4) (A)) is paid to the recipient,

so much of the total taxable amount (as defined in section 402(e)(4)(D)) of such distribution as is equal to the product of such total taxable amount multiplied by the fraction described in section 402(a)(2) shall be treated as a gain from the sale or exchange of a capital asset held for more than 6 months.

"(B) CROSS-REFERENCE.—

"For imposition of separate tax on ordinary income portion of lump sum distribution, see section 402(e).".

(c) CONFORMING AMENDMENTS.—

(1) Subparagraph (C) of section 402(a)(3) is repealed.

(2) Paragraph (5) (as in effect on December 31, 1973) of section 402(a) is repealed.

(3) Section 72 is amended by striking out subsection (n) thereof and by redesignating subsections (o) and (p) as (n) and (o), respectively.

(4) The second sentence of section 46(a)(3) and the second sentence of section 50A(a)(3) are each amended by inserting "section 402(e) (relating to tax on lump sum distributions)," before "section 408(f)".

(5) The third sentence of section 901(a) is amended by inserting "against the tax imposed by section 402(e) (relating to tax on lump sum distribu-

tions)," before "against the tax imposed by section 408 (f)".

(6) Subsection 1304 (b) (relating to special rules) is amended by striking out paragraph (2) and by redesignating paragraphs (3), (4), (5), and (6) as paragraphs (2), (3), (4), and (5), respectively.

(7) Subparagraph (A) of section 56 (a) (2) and paragraph (1) of section 56 (c) are each amended by inserting before "408 (f)" the following: "402 (e),".

(8) Sections 871 (b) (1) and 877 (b) are each amended by inserting ", 402 (e) (1)," after "section 1".

(9) Section 62 (defining adjusted gross income) is amended by inserting after paragraph (10) the following new paragraph:

"(11) CERTAIN PORTION OF LUMP-SUM DISTRIBUTIONS FROM PENSION PLANS TAXED UNDER SECTION 402(e).—The deduction allowed by section 402 (e) (3)."

(10) Section 122 (b) (2) (relating to consideration for the contract) is amended by striking out "72 (o)" and inserting "72 (n)".

(11) Section 405 (e) (relating to capital gains treatment and limitation of tax not to apply to bonds distributed by trusts) is amended by striking out "Sec-

tion 72 (n) and section 402 (a) (2)" and inserting "Subsections (a) (2) and (e) of section 402".

(12) Section 406 (c) (relating to termination of status as deemed employee, etc.) is amended by striking out "section 72 (n), section 402 (a) (2)" and inserting "subsections (a) (2) and (e) of section 402".

(13) Section 407 (c) (relating to termination of status as deemed employee, etc.) is amended by striking out "section 72 (n), section 402 (a) (2)" and inserting "subsections (a) (2) and (e) of section 402".

(14) Section 1348 (b) (1) (relating to earned income) is amended by striking out "72 (n), 402 (a) (2)" and inserting "402 (a) (2), 402 (e)".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply only with respect to distributions or payments made after December 31, 1973, in taxable years beginning after such date.

SEC. 2005. SALARY REDUCTION REGULATIONS.

(a) NO REGULATIONS TO TAKE EFFECT BEFORE MARCH 16, 1975.—

(1) The Secretary of the Treasury is hereby directed to withdraw the proposed salary reduction regulations (37 Fed. Reg. 25938).

(2) On or before December 31, 1974, no other proposed salary reduction regulations may be issued.

(3) On or before March 15, 1975, no salary reduction regulations may be issued in final form.

(4) Until salary reduction regulations have been issued in final form, the law shall be administered—

(A) without regard to the proposed salary reduction regulations described in paragraph (1) and without regard to any other proposed salary reduction regulations, and

(B) in the manner such law was administered before January 1, 1972.

(b) ADMINISTRATION IN THE CASE OF QUALIFIED PROFIT-SHARING PLANS.—In applying subsection (a) (4) to the tax treatment of contributions to qualified profit-sharing plans where the contributed amounts are distributable only after a period of deferral, the law shall be administered in a manner consistent with the following revenue rulings:

(1) Revenue Ruling 56–497 (1956—2 C.B. 284),

(2) Revenue Ruling 63–180 (1963—2 C.B. 189), and

(3) Revenue Ruling 68–89 (1968—1 C.B. 402).

(c) LIMITATION ON RETROACTIVITY OF FINAL REGULATIONS.—In the case of any salary reduction regulations which become final after March 15, 1975—

(1) for purposes of chapter 1 of the Internal Revenue Code of 1954, such regulations shall not take effect before January 1, 1975; and

(2) for purposes of chapter 21 of such Code (relating to Federal Insurance Contributions Act) and for purposes of chapter 24 of such Code (relating to withholding of income tax at sources), such regulations shall not take effect before the day on which such regulations are issued in final form.

(d) SALARY REDUCTION REGULATIONS DEFINED.—For purposes of this section, the term "salary reduction regulations" means regulations dealing with the includibility in gross income (at the time of contribution) of amounts contributed to pension, etc., plans.

SEC. 2006. RULES FOR CERTAIN NEGOTIATED PLANS.

(a) TREATMENT OF CERTAIN PARTICIPANTS IN THE PLAN.—Section 404(c) (relating to certain negotiated plans) is amended by inserting after the first sentence the following new sentences: "For purposes of this chapter and subtitle B, in the case of any individual who before July 1, 1974, was a participant in a plan described in the preceding sentence—

"(A) such individual, if he is or was an employee within the meaning of section 401(c)(1), shall be treated (with respect to service covered by the plan)

as being an employee other than an employee within the meaning of section 401 (c) (1) and as being an employee of a participating employer under the plan,

"(B) earnings derived from service covered by the plan shall be treated as not being earned income within the meaning of section 401 (c) (2), and

"(C) such individual shall be treated as an employee of a participating employer under the plan with respect to service before July 1, 1975, covered by the plan.

Section 277 (relating to deductions incurred by certain membership organizations in transactions with members) shall not apply to any trust described in this subsection.".

(b) OTHER AMENDMENTS TO SECTION 404 (c) (1).—

(1) Paragraph (1) of the first sentence of section 404 (c) is amended by striking out "and pensions" and inserting in lieu thereof "or pensions".

(2) The last sentence of section 404 (c) is amended by striking out "This subsection" and inserting in lieu thereof "The first and third sentences of this subsection".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending on or after June 30, 1972.

93D CONGRESS
2d Session } HOUSE OF REPRESENTATIVES { REPORT
No. 93-779

PRIVATE PENSION TAX REFORM

REPORT

OF THE

COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES

TOGETHER WITH SUPPLEMENTAL VIEWS

ON

H.R. 12481

FEBRUARY 5, 1974.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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93d Congress
2d Session } HOUSE OF REPRESENTATIVES { Report
93–779

PRIVATE PENSION TAX REFORM

February 5, 1974.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. Ullman, from the Committee on Ways and Means, submitted the following

REPORT

together with

SUPPLEMENTAL VIEWS

[To accompany H.R. 12481]

The Committee on Ways and Means, to whom was referred the bill (H.R. 12481), to amend the Internal Revenue Code of 1954 to provide pension reform, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

I. INTRODUCTION AND SUMMARY

H.R. 12481, as reported by the Committee on Ways and Means, deals with the tax aspects of making pension, profit sharing, and stock bonus plans fairer and more effective in providing retirement income for employees who have spent their careers in useful and socially productive work.

Your committee, in reporting this bill, anticipates that it will, in the House action, become a part of a broader bill dealing with retirement plans generally. It is expected that this bill will be combined with a version of H.R. 2, reported by the Committee on Education and Labor. This bill and the bill reported by the Committee on Education and Labor, are expected to jointly deal with participation, vesting, and funding with respect to pension plans. In these areas, this bill has been worked out in close coordination with the version of the bill expected from the Committee on Education and Labor to be sure that the general standards provided in these three areas are the same. Because of the expected coordination between your committee's bill and that of the Education and Labor Committee, no action is taken in this bill to deal with the general subjects of fiduciary standards, plan termination insurance, and reporting and disclosure, which are dealt with in H.R. 2.

This bill deals only with qualified plans and provides for enforcement with respect to retirement plans through the Internal Revenue

Service, while the bill from the Committee on Education and Labor is expected to deal with both qualified and nonqualified plans and provide for enforcement through the Department of Labor. Because of the coordination and effort involved, it is not expected that this dual jurisdiction in these three areas will present problems. Not only have the standards in the two bills been coordinated, but also provisions have been made for joint regulations in areas where problems might otherwise arise.

In the areas of participation, vesting, and funding it is important for the Committee on Ways and Means to have a part in setting the standards involved since for plans qualifying under these standards there are significant tax advantages. At the same time, guidelines established for retirement plans also are of significance to a committee charged with the jurisdiction of labor laws. Although provision is made for dual enforcement in these two areas by the Internal Revenue Service and the Department of Labor, it is anticipated that these agencies will coordinate their efforts so as not to duplicate enforcement efforts.

This bill encourages provisions for the retirement needs of many millions of individuals. At the same time, the committee recognizes that private retirement plans are voluntary on the part of employers, and, therefore, it has weighed carefully the additional costs to the employers and minimized these costs to the extent consistent with minimum standards for retirement benefits.

In broad outline, the bill is designed—

(1) to increase the number of individuals participating in retirement plans;

(2) to make sure that those who do participate in such plans do not lose their benefits as a result of unduly restrictive forfeiture provisions or failure of the plan to accumulate and retain sufficient funds to meet its obligations; and

(3) to make the tax laws relating to such plans fairer by providing greater equality of treatment under such plans for the different taxpaying groups involved.

This bill also goes a long way toward equalizing the tax treatment of those in different lines of work. In the case of the self-employed, it makes a threefold increase in the deductible amount which can be set aside for retirement. At the same time, it provides limits on the contributions or benefits for individuals covered by qualified plans. The bill also provides deductions for a modest retirement savings set-aside for those who are not covered by any existing plans.

The bill continues to rely primarily on the tax laws to secure needed improvements in pension and related plans. In general, it retains the tax incentives granted under present law for the purpose of encouraging the establishment of plans which contain socially desirable provisions. However, it also improves the effectiveness of these tax incentives by extending or increasing them in certain cases where this is warranted and by pruning them where they have given rise to problems.

Present tax treatment of qualified plans

Present law encourages employers to establish retirement plans for their employees by granting favorable tax treatment where plans qual-

ify by meeting nondiscrimination and other rules set forth in the Internal Revenue Code. Such qualified plans must cover a specified percentage of employees or cover employees under a classification found by the Internal Revenue Service not to discriminate in favor of employees who are officers, shareholders, supervisory employees, or highly compensated employees. Similarly, the contributions to such plans or the benefits paid out by them cannot discriminate in favor of such employees.

The favorable tax treatment granted qualified plans is substantial. Employers, within certain limits, are permitted to deduct contributions made to these plans for covered employees whether or not their interests are vested; earnings on the plan's assets are exempt from tax; and covered employees defer payment of tax on employer contributions made on their behalf until they actually receive the benefits, generally after retirement when their incomes and hence applicable tax rates tend to be lower.

The private pension system has shown substantial development under the present tax rules. Estimates of the coverage of private pension plans range from 23 million to 30 million employees for 1972 and 42 million employees are expected to be covered by 1980 without any change in law. Similarly, in 1970 about $14 billion was contributed to pension plans by employees and employers and 4.7 million beneficiaries received $7.4 billion in pension payments. Moreover, pension plan assets amounted to $150 billion (book value) in 1972 and are expected to reach $225 billion by 1980.

Problem areas

While the achievements of private retirement plans are substantial, a number of serious problems have become apparent. Those dealt with by this bill can be briefly outlined as follows:

Inadequate coverage.—Despite the rapid growth in pension coverage, about one-half of all employees in private nonagricultural employment are still not covered. Moreover, many plans have overly restrictive age and service requirements for participation, resulting in the exclusion of many employees.

Inadequate vesting.—Present law generally does not require an employee plan to give a covered employee vested rights to benefits—that is, the right to receive benefits if he leaves or loses his job before retirement age. Many private pension plans do provide vested rights to benefits before retirement, but as a general rule, employees do not acquire vested rights until they have served a fairly long time with the firm and/or are relatively mature. As a result, even employees with substantial periods of service may not acquire rights to pension benefits upon separation from employment.

Inadequate funding.—A significant number of pension plans are not adequately funded—that is, they are not accumulating sufficient assets to pay benefits in the future to covered employees. Under the present minimum funding requirements, contributions to qualified plans must be at least large enough to pay the normal costs (the pension liabilities created in the current year) plus the interest on unfunded accrued liabilities attributable to the past service of the covered employees. However, this minimum funding requirement is

not adequate because it does not require the unfunded accrued liabilities for past service to be amortized.

Discrimination against individuals not covered by pension plans.—Individuals who are outside of qualified pension plans have no opportunity to set aside income for their own retirement under the favorable tax treatment accorded to individuals covered by such plans. These individuals must save for their retirement from income after tax and must pay tax currently on the income earned by their retirement savings.

Unjustifiable differences in tax treatment of corporate owner-employees and self-employed individuals under qualified plans.—At present, in practice there is almost no practical limit on the amount of pension contributions that corporations can make to qualified plans on behalf of corporate employees. This has resulted in abuse situations in which extremely large pension benefits have been financed for corporate employees in part at the expense of the general taxpaying public, as a result of the favorable tax treatment that is accorded.

The fact that pension contributions on behalf of corporate employees are in practice not subject to control has also given rise to claims of discrimination on the part of self-employed persons. Pension contributions made by self-employed persons on their own behalf are limited to 10 percent of earned income up to $2,500 a year under present law. These limits also have had the undesirable effect of inducing many individuals, including professional people, who would normally carry on their activities as sole proprietors or partners, to convert their activities to the corporate form almost entirely to secure the greater tax advantages associated with corporate plans.

Provisions of the bill

The bill deals with these problems in many different ways. The principal provisions of the bill are summarized below.

1. *Minimum Participation Standards.*—Generally, an employee cannot be excluded from a plan on account of age or service if the employee is at least 25 years old and has had at least one year of service. The one-year of service requirement may be extended to 3 years if immediate vesting is provided.

2. *Minimum Vesting Standards.*—Three alternative minimum vesting standards are provided. The first of these provides for at least 25 percent vesting at the end of the fifth year of covered service. Thereafter the vesting percentage is increased by 5 percent a year until a level of 50 percent is reached at the end of the tenth year. Following this, vesting increases at the rate of 10 percent a year until 100 percent vesting is reached at the end of the 15th year.

The second vesting standard under the bill is 100 percent vesting at the end of ten years of covered service.

The third vesting standard is the so-called rule of 45. Under this standard, there must be 50 percent vesting when the sum of the age of the individual and the number of years of covered service equal 45 (provided there is at least 5 years of service). An additional 10 per-

cent per year is then required to be vested in each of the next 5 years of service.

These vesting rules are phased in over a five-year period beginning, in the case of existing plans, in 1976.

3. *Minimum Funding Standards.*—Normal costs are to be funded currently. Costs attributable to already-existing liabilities are to be amortized over a 40-year period. Liabilities under plan amendments and new plans generally are to be amortized over a 30-year period, except that in the case of multiemployer plans the amortization period is to be 40 years (in this latter case the Secretary of Labor can extend this for a further period of 10 years). Experience gains and losses are to be amortized over 15 years generally, but in the case of multiemployer plans over a period of 20 years (in this last case the period can be extended an additional ten years by the Secretary of Labor). These experience gains and losses generally will only be required to be recomputed every three years. The above funding standards are based upon accrued liabilities.

If funding requirements are higher under a second general standard which is based on accrued "vested" liabilities, this standard is to apply in lieu of the rules set forth above. Under this standard, accrued vested liabilities are determined, as also are the value of the plan's assets. Where the former exceeds the latter, the contribution for that year must be sufficient to cover the level annual payment required to amortize the difference in 20 years. A determination for a new 20-year amortization period is made in each of the succeeding years.

Where any of the requirements set forth above present hardship under a plan (and certain standards are met), the Secretary of the Treasury can permit variances spreading the current liability in this case over a 15-year period.

4. *Special Variance for Multiemployer Plans.*—In the case of multiemployer plans where the Secretary of Labor finds that the vesting and funding provisions seriously endanger the continuation of a plan, he can authorize exceptions to the vesting and funding standards described above.

5. *Government Plans.*—The participation, vesting, and funding standards set forth above do not apply in the case of governmental plans. In the case of these plans, the same standards continue to apply as under present law. Studies are to be made by the Ways and Means Committee and the Education and Labor Committee as to the need for change in these areas in the future.

6. *Joint and Survivor Annuities.*—Qualified plans in the future that provide annuities are to provide for them as joint and survivor annuities unless the employee elects out of such treatment.

7. *Effective Dates for Participation, Vesting, and Funding.*—Generally the participation, vesting, and funding provisions in the case of existing plans are to be effective as of January 1, 1976. In the case of new plans adopted after January 1, 1974, however, the participation, vesting, and funding provisions are to be effective as of the date

of enactment. In the case of collective bargaining plans, the January 1, 1976, date is to be extended to the expiration date of the current collective bargaining agreement (but not beyond January 1, 1981).

8. *Federal Procurement Contracts.*—In the case of employees working under contracts relating to federal procurement, construction, or research, the Secretary of Labor is directed to make a study as to procedures to encourage special provisions for engineers and others similarly situated who tend to change from one job to another, in order to provide them with more immediate vesting than is true in the case of employees generally. The study in this case is to be completed in a two-year period and regulations carrying out the study are to be put into effect at the end of the next year unless either House of the Congress within 90 days after the receipt of such proposed regulations votes against these regulations.

9. *Duties of Secretary of Health, Education, and Welfare.*—Whenever employees with vested rights leave their employment (prior to retirement), a statement as to their vested rights is to be given them by their employer. A copy of this statement is also to be transmitted through the Treasury Department to the Secretary of HEW. The Secretary of HEW will then inform the employee when he applies for social security benefits as to any statements of this type which an employer has given HEW. The department is not to be responsible for the accuracy of any such statements.

10. *Plan Termination Insurance and the Rules Relating to Fiduciaries.*—Although a program of plan termination insurance to protect the rights of covered employees is desirable, this bill makes no provision for such a program. Also, no change is made in this bill to tighten the rules relating to fiduciaries of qualified retirement plans which would also be desirable. This is because H.R. 2, which has been reported by the House Committee on Education and Labor, provides for a program of plan termination insurance and also provides for additional rules regarding fiduciary requirements which are designed to correct any existing abuses.

11. *Tax Court Procedure.*—Provision is made in the bill for the appeal from the determination of the Internal Revenue Service as to the initial qualification of pension plans or the effects of amendments proposed to pension plans. This is to be dealt with by a declaratory judgment procedure in the U.S. Tax Court.

12. *Establishment of Office of Assistant Commissioner.*—Provision is made for the establishment in the Internal Revenue Service of an office of Assistant Commissioner of Pensions and Exempt Organizations. This office is to provide a centralized group for unifying the tax treatment of pension plans throughout the country. Authorization is made for funds in the case of this office.

13. *Contributions on Behalf of Self-Employed Individuals.*—The limitations on deductions for self-employed individuals are to be increased from 10 percent of their self-employment income, not to exceed $2,500 up to 15 percent of their self-employment income, not to

exceed \$7,500. A minimum of \$750 may be deducted in these cases without regard to the percentage limitation.

14. *Individual Retirement Accounts.*—Individuals not covered by qualified or government pension plans are to be permitted to take a deduction of up to 20 percent of their earned income not to exceed \$1,500. This amount may be set aside in a special custodial account with a bank, savings and loan, credit union, life insurance company or regulated investment company without tax consequences on the earnings on the balance in this account until such time as the individual draws down the amount. This amount cannot be drawn down without penalty before age 59½ (except in the case of death or disability) and the individual must begin drawing the amount down by age 70½ if penalty is to be avoided. An individual may establish the account directly himself or, alternatively, an employer or labor union may maintain accounts of this type for employees or members.

15. *Limitations on Benefits and Contributions.*—In the case of defined contribution plans (profit-sharing and money purchase pension plans), there may not be set aside with respect to an individual in a qualified plan in any year more than 25 percent of his compensation or \$25,000, whichever is the lesser.

In the case of defined benefit plans, the pension which may be paid with respect to any individual may not exceed 100 percent of his compensation in his high three years of employment or \$75,000, whichever is the lesser. (Both the \$25,000 amount and the \$75,000 amount referred to above are subject to cost-of-living allowances.) A "grandfather clause" provides that if an individual is eligible for more than a \$75,000 pension based upon his current compensation by taking into account his additional period of employment up to the time of his expected retirement, this amount may be paid despite the \$75,000 limitation.

If an employee is under both a defined benefit plan and a defined contribution plan, then an overall limit is applied to coordinate the two limits discussed above. In this case, the sum of (1) the percentage utilization of the maximum limit under the defined benefit plan and (2) the percentage utilization of the maximum limit under the defined contribution plan cannot exceed 140 percent. Amounts in excess of these limits may be provided under the plan, but may not be paid out of a qualified trust.

16. *Lump Sum Distributions.*—Lump sum distributions from qualified plans are to be treated as ordinary income subject to special 10-year averaging. This treatment is to apply to the post-1973 portion of such a distribution, with regular capital gain treatment available to the remaining portion (pre-1974) of the distribution. The distribution is to be apportioned between the income averaging part and the capital gains part on the basis of the employee's years of active participation in the plan after 1973 and his years before 1974.

17. *Salary Reduction Plans and Cash-or-Deferred-Profit-Sharing-Plans.*—Determination of the inclusion of income to an employee in

the case of a salary reduction plan or a cash-or-deferred-profit-sharing plan is to be made on the basis of the way it would have been made before the Internal Revenue Service began the preparation of proposed regulations to change its administrative practices in this area. Those proposed regulations are to be withdrawn and no new regulations on this matter may be finally issued until after March 15, 1975.

18. *Revenue Effects.*—The tax provisions affecting retirement plans, which are in this bill, when fully effective, will result in an estimated net revenue loss of $460 million a year. An estimated revenue loss of $530 million a year is attributable to the provisions allowing individuals not covered by qualified plans to establish their own individual retirement plans and to the higher deduction limits for contributions by self employed people to H.R. 10 pension plans. This is offset by an estimated $70 million revenue gain attributable to the new tax treatment of lump sum distributions from qualified plans, and the provisions limiting contributions or benefits to qualified plans on behalf on any individual.

II. REASONS FOR THE BILL

One of the most important matters of public policy facing the nation today is how to assure that individuals who have spent their careers in useful and socially productive work will have adequate incomes to meet their needs when they retire. This legislation is concerned with improving the fairness and effectiveness of qualified retirement plans in their vital role of providing retirement income. In broad outline, the objective is to increase the number of individuals participating in employer-financed plans; to make sure to the greatest extent possible that those who do participate in such plans actually receive benefits and do not lose their benefits as a result of unduly restrictive forfeiture provisions or failure of the pension plan to accumulate and retain sufficient funds to meet its obligations; and to make the tax laws relating to qualified retirement plans fairer by providing greater equality of treatment under such plans for the different taxpayer groups concerned.

Essentially, your committee's bill represents a significant improvement in the tax treatment now applicable with respect to qualified retirement plans. Your committee regards the present legislation as part of an evolutionary process which keeps this basic framework but which builds on it new provisions which experience indicates are necessary for the proper functioning of these plans.

A fundamental aspect of present law, which the committee bill continues, is reliance on voluntary action by employers (and employees under contributory plans) for the establishment of qualified retirement plans. The committee bill also continues the approach in present law of encouraging the establishment of retirement plans which contain socially desirable provisions through the granting of tax induce-

ments. In other words, under the new legislation as under the present law, no one is compelled to establish a retirement plan. However, if a retirement plan is to qualify for the favorable tax treatment, it will be required to comply with specified new requirements which are designed to improve the retirement system. Since the favorable tax treatment is quite substantial, presently involving a revenue loss of over $4 billion a year, it is anticipated that plans will have a strong inducement to comply with the new qualification rules and thereby become more effective in fulfilling their objective of providing retirement income.

The tax advantages associated with qualification under the Internal Revenue Code are substantial. Employers, within certain limits, are permitted to deduct contributions made to such plans on behalf of covered employees, whether or not the interests of covered employees are vested; earnings on the plan's assets are exempt from tax; and covered employees defer payment of tax on employer contributions made on their behalf until they actually receive the benefits, generally after retirement when their incomes and hence applicable tax rates tend to be lower.

THE ENCOURAGEMENT OF NONDISCRIMINATORY PLANS UNDER PRESENT LAW

As already indicated, our tax laws now provide substanital tax incentives for the establishment of nondiscriminatory retirement plans. In order to qualify as nondiscriminatory, a retirement plan must cover a specified percentage of employees [1] or cover employees under a classification found by the Internal Revenue Service not to discriminate in favor of employees who are officers, shareholders, supervisory employees, or highly compensated employees. Similarly, either the contributions to the plan or the benefits paid out by the plan must not discriminate in favor of officers, etc.

In adopting this legislation, your committee is aware of the achievements of the private pension system under the 1942 legislation. The private retirement system has grown rapidly over the past three decades. While the precise coverage of retirement plans is not known, estimates of the number of employees now covered by such plans range from 23 million to 30 million.[2] This compares with coverage of 4 million in 1940 and 9.8 million in 1950. (See Table 1.) By 1980, these retirement plans are expected to cover 42 million employees.[3]

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[1] To qualify on this basis, the plan must cover 70 percent or more of all the employees, or 80 percent or more of all employees who are eligible to benefit under the plan if 70 percent or more of all the employees are so eligible, excluding in each case employees who have been employed not more than a minimum period prescribed by the plan, not exceeding 5 years, employees whose customary employment is for not more than 20 hours in any 1 week, and employees whose customary employment is for not more than 5 months in any calendar year (sec. 401(a)(3)(A)).

[2] Department of Health, Education and Welfare, Department of Labor and Treasury Department, Coverage and Vesting of Full-Time Employees under Private Retirement Plans; Findings from the April 1972 Survey, BLS Report No. 423, Sept. 1973.

[3] Public Policy and Private Pension Programs. A Report to the President on Private Employees Retirement Plans by the President's Committee on Corporate Pension Funds and Other Private Retirement and Welfare Programs, January 1965, p. vi.

TABLE 1.—PRIVATE PENSION AND DEFERRED PROFIT-SHARING PLANS:[1] ESTIMATED COVERAGE, CONTRIBUTIONS, BENEFICIARIES, BENEFIT PAYMENTS, AND RESERVES, 1950, 1955, 1960–70

Year	Coverage[2] end of year (in thousands)			Employer contributions (in millions)			Employee contributions (in millions)			Number of beneficiaries, end of year (in thousands)			Amount of benefit payments (in millions)			Reserves, end of year (in billions)		
	Total	Insured	Non-insured	Total	Insured	Non-insured	Total	Insured	Non-insured	Total	Insured	Non-insured	Total[3]	Insured	Non-insured[3]	Total	Insured	Non-insured
1950	9,800	2,600	7,200	$1,750	$720	$1,030	$330	$200	$130	450	150	300	$370	$80	$290	$12.1	$5.6	$6.5
1955	15,400	3,800	11,600	3,280	1,100	2,180	560	280	280	980	290	690	850	180	670	27.5	11.3	16.1
1960	21,200	4,900	16,300	4,710	1,190	3,520	780	300	480	1,780	540	1,240	1,720	390	1,330	52.0	18.8	33.1
1961	22,200	5,100	17,100	4,830	1,180	3,650	780	290	490	1,910	570	1,340	1,970	450	1,520	57.8	20.2	37.5
1962	23,100	5,200	17,900	5,200	1,240	3,960	830	310	520	2,100	630	1,470	2,330	510	1,820	63.5	21.6	41.9
1963	23,800	5,400	18,400	5,560	1,390	4,170	860	300	560	2,280	690	1,590	2,590	570	2,020	69.9	23.3	46.6
1964	24,600	6,000	18,600	6,370	1,520	4,850	910	310	600	2,490	740	1,750	2,990	640	2,350	77.7	25.2	52.4
1965	25,300	6,200	19,100	7,370	1,770	5,600	990	320	670	2,750	790	1,960	3,520	720	2,800	86.5	27.3	59.2
1966	26,300	6,900	19,400	8,210	1,850	6,360	1,040	330	710	3,110	870	2,240	4,190	810	3,380	95.5	29.3	66.2
1967	27,500	7,700	19,800	9,050	2,010	7,040	1,130	340	790	3,410	930	2,480	4,790	910	3,880	106.2	31.9	74.2
1968	28,000	7,900	20,100	9,940	2,240	7,700	1,230	340	890	3,770	1,010	2,760	5,530	1,030	4,500	117.8	34.8	83.1
1969	29,000	8,700	20,300	11,520	3,030	8,490	1,360	350	1,010	4,180	1,070	3,110	6,450	1,160	5,290	127.8	37.2	90.6
1970	[4] 29,700	9,300	20,400	12,580	2,860	9,720	1,420	350	1,070	4,720	1,220	3,500	7,360	1,330	6,030	137.1	40.1	97.0

[1] Includes pay-as-you-go, multi-employer, and union-administered plans those of nonprofit organizations, and railroad plans supplementing the Federal railroad retirement program. Excludes pension plans for Federal, State, and local government employees as well as pension plans for the self-employed. Insured plans are underwritten by insurance companies; noninsured plans are, in general, funded through trustees.

[2] Excludes annuitants; employees under both insured and noninsured plans are included only once—under the insured plans.

[3] Includes refunds to employees and their survivors and lump-sums paid under deferred profit-sharing plans.

[4] Coverage for 1972 is estimated at 23,000,000 in coverage and vesting of full-time employees under private retirement plans: Findings from the April 1972 survey by the Departments of Health, Education, and Welfare and Labor. See BLS Rept. No. 42-3, September 1973. To the extent that this, 23,000,000 coverage figure is correct, the estimates of coverage shown in the above table are too high. Nonetheless, the coverage figures in the table may still be useful in giving an approximation of the relative increase in coverage over the past 2 decades or so.

Source: Compiled by the Office of the Actuary, Social Security Administration, from data furnished primarily by the Institute of Life Insurance and the Securities and Exchange Commission.

The growth which has occurred is also evidenced in other ways. Between 1950 and 1970, total annual contributions made to retirement plans by employees and employers rose from about $2.1 billion to about $14 billion. In 1950, 450,000 beneficiaries received $370 million from retirement plans; in 1970, 4.7 million beneficiaries received $7.4 billion in pension payments. Moreover, retirement plan assets soared from $12.1 billion in 1940 to $150 billion in 1972 (book value) and are expected to reach $225 billion by 1980.[4]

PROBLEM AREAS

Despite the substantial achievements of retirement plans, it has become apparent that a number of problems have arisen which prevent many of these plans from achieving their full potential as a source for retirement income. These problem areas are outlined below.

Inadequate coverage.—Despite the rapid growth in retirement plan coverage in recent years to its 1970 level of from 23 to 30 million employees, somewhere in the vicinity of one-half of all employees in private, nonagricultural employment are still not covered by retirement plans. Retirement plans are still relatively rare among small business firms and in agriculture. Moreover, even where employees work for a firm with a retirement plan, the age and service requirements for participation in the plan may be overly restrictive, excluding many employees.

Discrimination against the self-employed and employees not covered by retirement plans.—Another problem area is that present law discriminates against employees not covered by retirement plans and against the self-employed. This is primarily because the personal retirement savings of individuals not covered by pension plans must be made out of after-tax income, while those covered by retirement plans are permitted to defer tax on their employer's retirement contributions. In addition, the earnings on the retirement savings of noncovered persons are subject to tax as earned, while the tax on earnings of pension funds is deferred until paid out as a retirement benefit.

Self-employed people also frequently maintain that they are discriminated against as compared with corporate executives and owner-managers of corporations in regard to the tax treatment of retirement savings. At present, there is no comprehensive limit on the amounts the employer can contribute on behalf of corporate executives and owner-managers of corporations; similarly, there is no statutory limit on the amount of pension benefits that the latter can receive—so long as those contributions or benefits do not discriminate in favor of employees who are shareholders, officers, supervisors, or highly paid and do not constitute unreasonable compensation. As a result of legislation enacted in 1962 and amended in subsequent years, self-employed people can establish retirement plans for themselves and their employees but their deductible contributions to such plans on their own behalf are limited to 10 percent of earned income up to $2,500 a year.

Inadequate vesting.—Present law generally does not require a retirement plan to give a covered employee vested rights to benefits—

[4] Table 1 and Securities and Exchange Commission, Private Noninsured Pension Funds, 1972, and A Report to the President on Private Employee Retirement Plans, *op. cit.*

that is, the right to receive benefits even if he leaves or loses his job before retirement age.[5] Over two-thirds of the private retirement plans provide vested rights to retirement benefits before retirement. However, as a general rule, employees do not acquire vested rights until they have accumulated a fairly long period of service with the firm and/or are relatively mature.

At present, only one of every three employees participating in employer-financed plans has a 50 percent or greater vested right to his accrued retirement benefits. Moreover, 58 percent of covered employees between the ages of fifty and sixty and 54 percent of covered employees 60 years of age and over do not have a qualified vested right to even 50 percent of their accrued retirement benefits.[6] As a result, even employees with substantial periods of service may lose retirement benefits on separation from employment. Extreme cases have been noted in which employees have lost retirement rights at advanced ages as a result of being discharged shortly before they would be eligible to retire. In addition, failure to vest more rapidly is charged with interfering with the mobility of labor, to the detriment of the economy.

Inadequate funding.—Another problem area is that a significant portion of present pension plans are not adequately funded—that is they are not accumulating sufficient assets to pay benefits in the future to covered employees. As a result, there is concern that many employees now covered by pension plans may not actually receive pensions when they retire because the funds will not be available to pay for those pensions.

In general, pension plans that are qualified under the Internal Revenue Code must meet certain minimum funding requirements by irrevocably setting aside funds in a trust or through the purchase of insurance contracts. Contributions to such plans must generally be at least large enough to pay the normal pension costs plus the interest on unfunded accrued liabilities which generally are attributable to the past service of the covered employees. However, this minimum funding requirement is not adequate because it is designed only to prevent the unfunded liabilities from growing larger and does not require any payment to reduce the amount of the outstanding unfunded liabilities, which may be substantial.

The available evidence suggests that many pension plans are adequately funded—but that a significant proportion of the plans have not been adequately funded. This is indicated, for example, by a survey made by the Senate Labor Subcommittee of 469 trustee-administered pension plans covering 7.1 million employees. In 1970, about one-third of the plans in the study covering one-third of the participants reported a ratio of assets to total accrued liabilities of 50 percent or less; while 7 percent of the plans covering 8 percent of the participants reported a ratio of assets to accrued liabilities of 25 percent or less. (See Table 2.)

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[5] However, as noted below, vesting is required for employees under so-called H.R. 10 plans for owner-employees and may also be required in other cases to prevent the plan from having a discriminatory effect in operation, or upon plan termination or complete discontinuance of contributions.

[6] U.S. Treasury Department—Fact Sheet, Pension Reform Program, as reprinted in Material Relating to Administration Proposal Entitled the "Retirement Benefits Tax Act", Committee on Ways and Means, 93d Cong., 1st sess., p. 37, Table B.

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TABLE 2.—FUNDING OF PRIVATE PENSION PLANS: ASSETS AT MARKET VALUE, AS PERCENT OF PRESENT VALUE [1] OF TOTAL ACCRUED RETIREMENT BENEFITS, BY PLAN AND BY PARTICIPANT: AS OF 1970

	By plan		By participant	
	Number [2]	Percent	Number	Percent
Assets as percent of accrued benefits:				
25 percent or less	33	7	541, 801	8
26 through 50	118	25	1, 798, 945	25
51 through 75	104	22	2, 134, 601	30
76 through 100	117	25	1, 211, 298	17
101 through 125	55	12	949, 975	13
126 through 150	20	4	134, 252	2
151 through 175	8	2	52, 498	1
Over 175	14	3	275, 835	4
Total	469	100	7, 100, 205	100

[1] Present value of accrued benefits is actuarially determined.
[2] Sample consists of 469 trustee-administered plans. Comparable data were not available for insured plans.

Note: The sum of individual items may not equal totals because of rounding.

Source: Senate Committee on Labor and Public Welfare Report on S. 3598, The Retirement Income Security for Employees Act of 1972, 92d Cong., 2d sess., p. 97.

In general, the older plans are better funded than the newer ones. Over one-half of the plans covered by the study which were 6 years old or less had an assets-liabilities ratio of 50 percent or less, while 35 percent of the plans in existence for 17 years to 21 years had such an assets-liabilities ratio.[7]

Loss of pension benefits due to plan terminations.—Concern has also been expressed over the possible loss of pension benefits as a result of termination of pension plans. The Studebaker case, which has been widely publicized, illustrates how pension benefits can be lost as a result of termination of a plan. When Studebaker closed its South Bend, Indiana, plant in 1964, the employees were separated and the pension plan was terminated. The plan provided fairly generous vested rights and the funding apparently would have been adequate had the firm remained in business and the plan continued in operation. However, at termination, the plan had not yet accumulated sufficient assets to meet all its obligations. As a result, full pension benefits were paid only to employees already retired and to employees age 60 or over with 10 years or more of service. Little or no benefits were paid to large numbers of other employees, many of whom had vested rights.

A joint study of the Treasury Department and the Department of Labor indicates that there were 1,227 plan terminations in 1972.[8] These terminations resulted in the loss of $49 million of benefits (present value) by 19,400 pension participants in 546 of the terminated plans. The average loss of benefits for participants amounted to $2,500. Participants losing benefits represented about eight one-hundredths of one percent of workers covered by pension plans. The data, of course, cover terminations occurring over a one-year period and may not be the typical experience.

Misuse of pension funds and disclosure of pension operations.—There also has been concern about the administration of pension plans. It has been charged that all too frequently pension funds have not been

[7] Senate Committee on Labor and Public Welfare report on S. 3598, The Retirement Income Security for Employees Act of 1972, 92d Cong., 2d sess., p. 98.
[8] Department of the Treasury and the Department of Labor Study of Pension Plan Terminations, 1972—Final Report, August 1973.

used in the best interest of covered employees. There have been cases of extreme misuse of pension funds.

The Welfare and Pension Plans Disclosure Act, which is administered by the Labor Department, was adopted in 1958 to protect the interests of welfare and pension plan participants and beneficiaries by requiring disclosure of information regarding such plans. This Act requires the plan administrators to file with the Secretary of Labor and to send to participants upon written request a description and annual report of the plain. The Act was amended in 1962 to make theft, embezzlement, bribery, and kickbacks Federal crimes where these occur in connection with welfare and pension plans. The 1962 amendment also conferred limited investigatory and regulatory powers upon the Secretary of Labor. However, abuses in the administration of pension plans and in the handling of pension funds have continued.

The Internal Revenue Code (sec. 503(b)) seeks to prevent abuses in the use of funds held under qualified retirement plans by prohibiting qualified trusteed plans from engaging in certain specified prohibited transactions such as lending funds without adequate security and a reasonable rate of interest to the creator of the plan, his family, or corporations controlled by him. Other prohibited transactions include payment of excessive salaries, purchase of property for more than an adequate consideration, sale of property for less than an adequate consideration, or any other transactions which result in a substantial diversion of funds to such individuals. Special additional rules apply to payment of excessive salaries, purchase of property for more than an trusts benefitting owner-employees.

OBJECTIVES OF THE MAIN PROVISIONS OF THE BILL

Although there have been significant legislative changes since the present basic framework of the tax laws relating to pensions was first adopted—principally in allowing self-employed people to establish retirement plans for themselves and their employees and in requiring the disclosure of information regarding welfare and pension plans—it has been more than 30 years since these basic pension provisions were first adopted. It is time for new legislation to conform the pension provisions to the present day situation and to provide remedial action for the various problems that have arisen in the retirement plan area during the past three decades.

As indicated above, the present provisions of the Internal Revenue Code provide tax inducements for the adoption of nondiscriminatory plans and to a limited extent other objectives. These nondiscrimination provisions are retained, but the new legislation also requires retirement plans to conform to additional requirements in order to qualify for the favorable tax treatment under the Internal Revenue Code. In taking this action, the committee has been mindful of the need to construct the new requirements so that they will provide meaningful improvement in the various problem areas noted under the present law. At the same time, the committee is aware that under our voluntary pension system, the cost of financing pension plans is an important factor in determining whether any particular retirement plan will be adopted and in determining the benefit levels if a plan is adopted, and that

unduly large increases in costs could impede the growth and improvement of the private retirement system. For this reason, in the case of those requirements which add to the cost of financing retirement plans, the committee has sought to adopt provisions which strike a balance between providing meaningful reform and keeping costs within reasonable limits.

Generally, it would appear that the wider or more comprehensive the coverage, vesting, and funding, the more desirable it is from the standpoint of national policy. However, since these plans are voluntary on the part of the employer and both the institution of new pension plans and increases in benefits depend upon employer willingness to establish or expand a plan, it is necessary to take into account additional costs from the standpoint of the employer. If employers respond to more comprehensive coverage, vesting and funding rules by decreasing benefits under existing plans or slowing the rate of formation of new plans, little if anything would be gained from the standpoint of securing broader use of employee pensions and related plans. At the same time, there are advantages in setting minimum standards in these areas both to serve as a guideline for employers in establishing or improving plans and also to prevent the promise of more in the form of pensions or related benefits than eventually is available.

Coverage.—One of the major objectives of the new legislation is to extend coverage under retirement plans more widely. For this reason, the committee bill sets minimum standards on the age and service requirements which can be used to exclude employees from participation in plans. Under the new rules, a qualified plan cannot require an employee to serve longer than one year or attain an age greater than 25 (whichever occurs later) as a condition of eligibility to participate in the plan. Thus, an employee who reaches age 25 and has at least a year of service would be eligible to participate (unless he is excluded for some reason other than age or service). However, a plan that provides vested rights immediately on participation will be permitted to set the participation requirements at no more than 3 years of service and age 25.

The Committee believes that these rules are reasonable. They provide a balance between the need to grant employees the right to participate in pension plans at a relatively early age so that they can begin to acquire pension rights and the need to avoid the administrative drawbacks that would be involved in granting coverage to immature and transient employees whose benefits would in any event be small. The participation rules also prevent potential avoidance of the vesting rules in the committee bill.

The bill also adopts a number of provisions which are carefully designed to make the minimum age and service requirements for participation work effectively. The Secretary of the Treasury or his delegate is given the authority to determine under regulations what constitutes a year of service for purposes of fulfilling the participation requirement in order to make the service requirement sufficiently flexible to meet the many varying situations which arise in different industries operating under different conditions of employment. At the same time, guidance is provided to those framing the regulations so as to

minimize the possibilities of abuse. The bill, for example, provides that a qualified plan may not establish a service requirement for participation which has the practical effect of treating as a year of service an average period for all employees of more than 12 months or which excludes any employee who has more than 17 months of continuous service. In addition, the bill provides that a seasonal employee whose customary employment is for at least 5 months in a 12-month period is generally to be given credit for a year of service if he works his customary season months in a 12-month period.

The Secretary of the Treasury or his delegate is also given authority to prescribe by regulations different rules for determining a "year of service" for those industries whose normal work schedules are substantially different from those that are generally applicable. (For example, the regulations could, where consistent with the practice of an industry, permit 100 hours of employment to be treated as one month, or 1,000 hours of employment to be treated as one year.)

The bill also provides guidance to the Secretary or his delegate in issuing regulations in regard to the computation of the years of service of an employee who has a break in service. This is of significance since an employee will generally receive greater vested rights if all his periods of service with the employer are combined and treated as one period of service than if each period of service interrupted by a break is treated separately. This matter involves difficult issues. On the one hand, it appears desirable not to require service prior to the break to be merged with service after the break where the break in service is of substantial duration and the period of prior service is relatively short. This is because in such cases, the plan frequently will not have records regarding the employee's prior service and the administrative difficulties resulting from any requirement to merge service prior to the break with service after the break might make employers reluctant to rehire employees and yet at the same time would not provide substantial benefits for the latter. On the other hand, where the break in service is of relatively moderate duration, treating each period of service as a separate period could give rise to abuses by giving employers an inducement to discharge covered employees and then rehire them after a short time in order to reduce the cost of financing plan benefits. An additional consideration is that where an employee has acquired an attachment to the firm by serving a substantial number of years, and particularly where he has accumulated substantial vested rights to benefits, it seems reasonable that all his service including service prior to the break should be taken into consideration in determining his participation under the plan.

Your committee has resolved these issues by providing that where an employer rehires an employee who has had a break of service of at least one year after serving with the employer for less than 4 consecutive years, the plan will not be considered to be following an unreasonable procedure merely because it does not take into consideration his prior service. However, where a rehired employee had completed at least 4 consecutive years of service before the break, his prior years of service must be taken into consideration for purposes of computing his years of service unless the break is for 6 years or more. However, if a rehired employee acquired a nonforfeitable right to at least 50 per-

cent of his accrued benefits derived from employer contributions prior to the service break, all his prior service must be taken into consideration in computing his years of service, regardless of the duration of the break.

Under plans which provide defined or specified benefits, it is more expensive for an employer to finance an equivalent retirement benefit for an older employee than for a young employee. To avoid making it more difficult for older workers to find employment, the bill permits plans which provide defined benefits to exclude from participation employees who begin employment within 5 years of the normal retirement age. This, for example, permits a defined benefit plan which provides for a normal retirement age of 65 to exclude an employee who begins work at the age of 60. Such exclusions are not permitted under money purchase pension plans or profit sharing plans. Under these plans, an employee is not promised any specified benefits, but instead is entitled only to the amount that is in his account (employer contributions, forfeitures, and employee contributions, adjustments for earnings, losses, and expenses) with the result that it is no more expensive for the employer to cover older employees than younger employees under such plans.

For purposes of satisfying the coverage rules of the Internal Revenue Code, a plan is permitted to exclude from participation employees covered by a collective bargaining agreement where the agreement does not provide that such employees are to be included in the plan and there is evidence that retirement benefits were the subject of good faith bargaining. This provision has two objectives: first, it recognizes that employees who are represented in collective bargaining agreements may prefer other forms of compensation, such as cash compensation, to coverage in a plan; and second, it makes it possible for employees who are not covered by a collective bargaining agreement to receive the advantages of coverage in a qualified plan where some employees of the same firm have elected through collective bargaining agreement not to be covered by the plan.[9] At present, it frequently is not feasible for the former employees to receive the advantages of a qualified plan because the very fact that the employees covered by the collective bargaining agreement rejected coverage results in disqualifying the plan on the ground that it does not satisfy the coverage requirements for nondiscrimination.

Finally, all government plans (including the federal civil service pension plan) and plans of churches (unless they elect to be subject to the new rules) are exempted from the new participation standards as well as from the minimum vesting and minimum funding standards described below. However, both government plans and church plans must continue to meet the requirements for qualification under present law in order to make their employees eligible for the tax benefits associated with qualified plans. The committee exempted government plans from the new higher requirements because adequate information is not now available to permit a full understanding of the impact these new requirements would have on government plans. For this reason the

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[9] In the case of a plan covering airline pilots under a collective bargaining agreement, the bill permits the exclusion of the employees who are not covered by the collective bargaining agreement for purposes of the coverage requirements for nondiscrimination.

bill specifically provides that the Committee on Ways and Means and the Committee on Education and Labor are to study the participation, vesting, and funding practices of government plans, government plan fiduciary standards, factors affecting the mobility of government employees and those employed under Federal procurement contracts, and the need for Federal standards in each of these matters. Each committee is to submit to the House of Representatives not later than December 31, 1976, the results of the studies, together with its recommendations.

To give existing plans time to adjust to the new age and service participation requirements, the effective date of these requirements is deferred to January 1, 1976, for plans in existence on January 1, 1974. For plans adopted on or after January 1, 1974, the new minimum age and service requirements will be effective in the first plan year beginning after the date of enactment. However, for existing plans which were the subject of collective bargaining agreements, the minimum funding standard will not apply until the last of the present collective bargaining agreements terminates or January 1, 1981, whichever is sooner.

Vesting.—Coverage under a pension plan does not aid an individual if he later forfeits his right to his pension benefits upon voluntary or involuntary termination of employment. This is an important consideration in view of the fact that ours is a fairly mobile economy where employees tend to change jobs frequently, especially in their younger years. Moreover, the cyclical and technological nature of certain industries results in frequent layoffs over a work career for employees in those industries, as in aerospace and defense. The committee bill deals with this problem by requiring qualified pension plans to grant covered employees reasonable minimum vested rights to their accrued benefits.

The committee bill helps to assure that covered employees will actually benefit from pension plans by requiring qualified plans, as a condition of qualification under the Internal Revenue Code to meet reasonable minimum vesting standards. Qualified plans are required to grant covered employees nonforfeitable rights with respect to their own contributions. In addition, such plans are required to provide covered employees minimum vested rights with regard to employer contributions after they have fulfilled certain specified requirements. In adopting these minimum vesting requirements, your committee was guided by two broad considerations. The first relates to the need to balance the protection offered by the minimum vesting provision against the additional cost involved in financing the plan. Employees, of course, would be accorded the maximum protection if they were granted immediate and full vested rights to plan benefits. However, it is generally recognized that a requirement for immediate and full vesting would not be feasible because it would involve such substantial additional costs that it would impede the adoption of new plans and the liberalization of existing ones.

The second broad consideration guiding the committee in regard to minimum vesting is the need to provide adequate flexibility to the hundreds of thousands of retirement plans, to enable these plans to provide adequate vesting protection to their covered employees, in the light of the individual circumstances and conditions confronting

them. In other words, the committee does not believe that it would be desirable to force all retirement plans into one rigid mold so far as vesting is concerned.

In view of these considerations, the committee bill provides three alternative vesting options:

Under one option, a qualified plan would be required to provide an employee with vested rights to at least 25 percent of his accrued benefits from employer contributions after 5 years of covered service, plus an additional 5 percent for each of the next 5 years and 10 percent for each of the next following 5 years. This means that under this option, at least 50 percent of the employer-provided benefits must be vested after 10 years of covered service and 100 percent vested after 15 years of covered service. This option is designed to enable plans to provide the required vesting on a gradual basis according to years of service, generally without reference to the age of the employee. This option is neutral with respect to age, since all employees who fulfill the required service requirements are entitled to the specified vesting without regard to their age.

A second option permits firms which wish to provide faster vesting for their more mature employees than for their younger ones to do so by taking into consideration the age of the employee as well as his service for purposes of computing his vested rights. Under this option, the plan is required to provide a covered employee who has at least 5 years of covered service a vested right in at least 50 percent of the accrued benefits financed by the employer's contributions when the sum of his age and years of service equals 45; the minimum required vesting percentage would thereafter be increased by 10 percentage points a year in each of the following 5 years. This would, for example, provide an employee who began work for the employer at the age of 25, a vested right in 50 percent of his accrued benefits financed by employer contributions after 10 years of covered service when he reaches the age of 35. After completing an additional 5 years of service and attaining age 40 he would then be vested in 100 percent of his accrued benefits. On the other hand, an employee who starts to work for the employer at the age of 40 under this option would at the age of 45, upon completion of 5 years of service, receive a 50 percent vested right in his accrued benefits.

The third option provided under the committee bill permits qualified plans to fulfill the minimum vesting requirements by providing employees a 100 percent nonforfeitable right to accrued benefits derived from employer contributions when they have achieved at least 10 years of service. The committee provided this option because it grants covered employees complete vesting protection after the completion of a reasonably short period of service.

Because the objective is to encourage more adequate provision for retirement, plans are permitted to defer the payment of benefits to individuals with vested rights until they reach normal retirement age and are separated from the firm.[10] As a general rule, the plan will

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[10] However, to avoid requiring a plan to carry relatively small amounts of benefits on its books for a long period of time, the bill permits a plan to elect to pay off the employee's vested rights in the form of a lump-sum payment when the employee is separated if the amount of the distribution is less than $1,750. In addition, at the election of the employee, a plan which so provides may make lump-sum payments of any amount to employees at the time they are separated from service in lieu of retirement benefits.

specify what is normal retirement age for this purpose. However, in order to prevent undue delay in the payment of benefits, payment must begin not later than 60 days after the close of the last plan year in which the participant (1) attains age 65, (2) reaches the 10th anniversary of the start of his participation, or (3) terminates his employment. The "10th anniversary" provision was adopted to encourage the employment of individuals who are hired at mature ages for a long enough period to enable them to earn significant benefits under the plan.

The committee further decided to apply the minimum vesting requirements to benefits accrued prior to the effective date of the provision as well as to benefits accrued after this date on the ground that employees merit equal protection with regard to plan benefits regardless of when these benefits accrued. This is achieved by generally taking into account the employee's entire service with the employer in determining both his nonforfeitable vesting percentages and the amount of accrued benefits to which these vesting percentages are applied.

To keep the operation of the minimum vesting requirement reasonable and to avoid imposing undue burdens on plans, certain periods of service are permitted to be excluded in determining the employee's nonforfeitable rights. The service which may be excluded is:

(1) service before age 25,

(2) service during a period for which the employee declined to contribute to a plan requiring employee contributions,

(3) service during any period for which the employer did not maintain the plan,

(4) seasonal service which does not include a sufficiently long period of time in each 12-month period to be counted as service for purposes of the plan,

(5) certain service broken by periods of suspension of employment, and

(6) service before January 1, 1969, unless the employee has had at least 5 years of service after December 31, 1968. (This latter exclusion was adopted to prevent the possibility that plans would otherwise be required to incur extremely large costs for benefits to previously retired employees who would otherwise have the incentive to come back to a firm for relatively short periods of time, primarily in order to obtain plan benefits for their prior service).

How much protection is actually afforded to employees under the minimum vesting provision depends not only on the minimum vesting percentages set forth in the bill but also in the case of defined benefits on the accrued benefits to which these minimum vesting percentages are applied. For this reason, your committee has devoted particular attention to the development of fair and equitable procedures for the computation of accrued benefits.

Under the first option, the accrued benefit is determined by providing that the plan may not require employees to accrue benefits in any year of service at a rate which is more than 133⅓ percent of the rate of accrual in any other year.[11] The primary purpose of this

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[11] In testing the annual rate of accrual for any plan year against the annual rate of accrual for any prior plan year, the plan may provide that accruals for any prior period before the 11th year of service are not to be taken into account.

provision is to prevent attempts to defeat the objectives of the minimum vesting provisions by providing undue "backloading", i.e., by providing inordinately low rates of accrual in the employee's early years of service when he is most likely to leave the firm and by concentrating the accrual of benefits in the employee's later years of service when he is most likely to remain with the firm until retirement. Of course, a plan under which employees accrue benefits at a uniform rate would satisfy the requirements of this option.

Under a second option, a defined benefit plan may provide for an annual rate of accrual which is not less than 3 percent of the maximum benefit to which the participant would be entitled if he became a participant at the earliest possible entry age under the plan and served continuously until the earlier of age 65 or the retirement age specified under the plan. This treatment provides equal amounts of accrued benefits to employees who are separated prior to retirement age after having worked the same number of years, regardless of their respective ages at the time the service was performed.

Under present law, highly mobile employees such as engineers, frequently do not derive benefits from pension plans even when such plans have liberal vesting provisions because they tend to change jobs before they acquire vested rights in any particular plan. The bill approved by your committee will help such employees to secure actual benefits from pension plans. It provides that where an employer sets up different pension plans for different groups of employees the rate of vesting granted under the different plans need not be the same so long as the combined effect of all the plans is nondiscriminatory. This permits an employer to cover his highly mobile employees in a separate plan which provides faster vesting but lower benefits at normal retirement age than the other plans that he establishes for his other employees.

In addition, the committee bill instructs the Secretary of Labor to conduct a full and complete study of the steps necessary to ensure that professional, scientific and technical personnel and others working in associated occupations employed under federal procurement, construction or research contracts or grants will, to the extent feasible, be protected against the forfeitures of pension or retirement rights as consequence of job transfers or loss of employment resulting from terminations or modifications of Federal contract grants or procurement policies. The Secretary of Labor is further instructed to report the results of his study to the Congress within two years after the date of enactment of the Act. Also, if he determines it to be feasible, the Secretary is to develop regulations within one year after the date on which he submits his report to the Congress, which will provide for the better protection of the vesting rights of the employees concerned. These regulations are to take effect unless either house of the Congress adopts a resolution disapproving the regulations within 90 days after they are submitted to the Congress.

Under certain circumstances, a plan's vesting rules may cause the prohibited discrimination. Questions have arisen as to whether a plan which satisfies the vesting requirements provided by your committee automatically satisfies the vesting requirements of the nondiscrimination rules. To remove any possible ambiguity on this subject, the committee bill specifically provides that a plan which satisfies the minimum vesting requirements provided by this legislation is to be treated as satisfying any requirements regarding the vesting schedule and

the rate at which benefits accrue, resulting from the application of the Internal Revenue Code requirements regarding nondiscrimination, unless (a) there has been a pattern of abuse under the plan (such as a firing of employees before their accrued benefits vest), or (b) there have been, or there is reason to believe there will be an accrual of benefits or forfeitures tending to discribinate in favor of employees who are officers, shareholders, or highly compensated.

Table 3 shows that the addtional costs of financing plans involved when the minimum vesting requirement adopted by your committee becomes fully effective is expected to be moderate. These cost estimates are necessarily based on assumptions as to turnover rates, age distribution, etc. However, the range of costs is believed to be broadly indicative of the expected experience of employers generally.

TABLE 3.—ESTIMATED RANGE OF INCREASE IN PENSION PLAN COSTS UNDER THE REQUIREMENTS FOR MINIMUM VESTING ADOPTED BY THE COMMITTEE

	Present vesting—			
	None	Moderate [1]	Liberal [2]	All plans
Percentage of pension plan members covered under such plans	23	56	21	100
Range of present plan cost as a percent of payroll	1.8–11.2	2.2–12.5	2.2–12.7	1.8–12.7
Range of increase in cost under committee vesting requirement:				
As a percent of payroll	.2–1.5	.1–.2	0	0–1.5
As a percent of present plan cost	5–58	1–8	0	0–58

[1] Plan provides some vesting, but less liberal than full vesting after 10 years of service.
[2] Plan provides full vesting after 10 years service or less, with no age requirement.

Source: "Estimates prepared for the Joint Commtitee on Internal Revenue Taxation," by Donald S. Grubbs, Jr.

The additional costs will, of course, be zero or smallest for those plans which now have liberal vesting provisions and greatest for those plans which now provide no vesting prior to retirement. This reflects the fact that the minimum vesting provisions will generally bring the costs of the latter plans up to the level of those plans which now have liberal vesting provisions. Overall, for all plans, the cost increases resulting from the new minimum vesting requirements will range from 0 to 1.5 percent of payroll.

In the case of plans adopted after January 1, 1974—which will have been adopted with knowledge of the new requirement—the effective date is the first plan year beginning after the date of enactment. However, for plans in existence on January 1, 1974, to provide time to adjust to the new minimum vesting requirements, the effective date of the minimum vesting standards is plan years beginning after December 31, 1975. For plans, which are maintained pursuant to collective bargaining agreements, however, the minimum vesting requirements take effect for plan years beginning after the expiration of the latest agreement or December 31, 1980, whichever is earlier.

In addition, for all plans in existence on December 31, 1973, the vesting provisions are to become effective gradually over a 5-year transition period. Under this rule, 50 percent of the vested rights generally called for under the legislation are to become effective in the first year in which the vesting requirement applies. Thereafter the required vesting is to increase 10 percentage points each year until

reaching 100 percent of the vested rights generally required under the legislation after the fifth year.

Finally, the Secretary of Labor is authorized to provide variances from the generally applicable minimum vesting requirements for multi-employer plans whenever he finds that the application of these requirements would (1) increase the cost of the parties to the plan to such an extent that there would be (a) a substantial risk to the voluntary continuation of the plan, or (b) a substantial curtailment of pension levels or the levels of employees' compensation, or (2) impose unreasonable administrative burdens regarding the operation of the plan, and (3) where the application of these requirements would be adverse to the interest of plan participants generally. Under such variances, the Secretary of Labor would prescribe alternative methods by which the multi-employer plan concerned could satisfy the minimum vesting requirements for the period of time this is necessary. These variances from the vesting requirements are not, however, to be prescribed unless all plan participants and other interested persons have received adequate notice from the plan administrator of any hearing to be held to consider the variance.

Minimum funding standards.—Your committee believes that it is essential for plans to be adequately funded in accordance with a contributions schedule which will produce sufficient funds to meet the obligations of the plan when they fall due. Such an adequate contributions schedule for funding plans not only protects the rights of employees under the plan but also provides an orderly and systematic way for employers to pay their plan costs.

You committee believes that the minimum funding requirements under present law are inadequate because they do not require any provision to be made to amortize unfunded past service liabilities. Instead they merely require the contributions to the plan to be sufficient to pay normal costs (the costs attributable to the current operation of the plan) and to prevent an increase in unfunded liabilities. To remedy this, your committee has provided new minimum funding standards for qualified plans. In the most typical case, the standard requires contributions to the plan to be sufficient not only to pay normal costs but also to amortize all unfunded past service liabilities in level payments over specified periods of time. A second standard requires contributions to be based on the accrued unfunded vested liabilities of the plan if this results in higher annual payments than the general funding standard. It is anticipated that this second standard will be used for only a small minority of the plans which have relatively large unfunded vested liabilities.

The new funding standards do not apply to the following types of qualified plans:

(1) Profit-sharing and stock bonus plans. (There is no need for a requirement that contributions be sufficient to fund a specified level of benefits in the case of these plans since they do not specify that participants are to receive any designated amount of benefits, but instead require the paying out of whatever benefits the funds in the plan will purchase on the date the benefits are to begin.)

(2) Plans funded exclusively through the purchase of individual insurance contracts which provide for level annual premium pay-

ments. (These plans are excluded from the funding requirements because they have behind them the funding of the insurance companies involved.)

(3) Government plans. (However, government plans are still required to meet the present funding standards which require contributions to be sufficient to pay normal pension costs plus the interest on past service liabilities. Also, as noted previously, your committee has provided for a study of government plans to determine the need for supplying funding standards.)

(4) Church plans unless these plans elect to be covered by such requirements, and

(5) Plans which after the date of enactment of the legislation do not provide for employer contributions.

In the most typical case where the first general funding standard is employed, employers maintaining single-employer plans not in existence on the effective date of the legislation must pay normal costs currently and amortize their past service liabilities in level payments over no more than 30 years. A similar amortization period of no more than 30 years is required for past service liabilities arising as a result of single-employer plan amendments after the effective date. However, in recognition of the fact that large numbers of plans assumed heavy past service liabilities prior to any requirement to amortize such liabilities, plans in existence on the effective date of the legislation are allowed a longer period—up to 40 years—to amortize past service liabilities existing at the beginning of the first plan year to which the requirement applies. In addition, multi-employer plans are allowed to amortize all past service liabilities, including those created after the effective date of the legislation, over a period of up to 40 years. This recognizes that multi-employer plans generally have an added element of financial strength in that their contributions come from a number of employers who as a group are less likely than comparable single employers to experience business difficulties.

This funding standard, which will apply to the overwhelming majority of plans, is comprehensive since it requires amortization of all accrued past service liabilities (i.e., both vested and nonvested unfunded past service liabilities).

The level payment method of funding adopted by your committee is analogous to the payment of a home mortgage in that each specified payment includes a payment for both interest and principal. It has the advantage of spreading the payments out evenly over the payment period which generally makes it easier for the employer to plan for meeting the payments. Another factor in your committee's decision is that the level payment method, while providing for adequate amortization of past service costs, initially adds only relatively moderate amounts to an employer's existing funding costs. This is because interest on unfunded accrued past service costs, which accounts for the bulk of the payments under the level payment method in the early years, is already required to be contributed to a defined benefit plan under present law.

Provision is also made for the equitable funding of experience deficiencies which arise when the actual plan costs turn out to be greater than were previously estimated on the basis of the actuarial assump-

tions—for example, when the value of the plan assets is less than was expected. In establishing a minimum funding standard for such experience deficiencies, the committee sought to avoid two problems. If it allowed the experience deficiencies to be funded over a very long period of time, an incentive would be provided for the use of actuarial assumptions which understate the costs since any resulting deficiencies could then be made up over a long period of time without penalty. On the other hand, if the experience deficiencies were required to be amortized over too short a period, employers would encounter hardship in meeting the annual payments. This is especially pertinent in view of the fact that most actuarial or experience deficiencies are inadvertent.

Your committee's bill seeks to avoid both these problems by allowing experience deficiencies to be funded in level amounts over a period of up to 15 years for single employer plans and up to 20 years for multiemployer plans. Symmetrical treatment is provided for experience gains which are attributable to a favorable variation between actual experience and the actuarial assumptions entering into the determination of the employer's cost and contributions.

The determination of experience gains and losses for this purpose will generally be made every three years except where the Secretary or his delegate (pursuant to regulations) finds it necessary to require the determination to be made more frequently.

Relief measures are provided to mitigate the impact of the funding requirements in cases where it would otherwise result in hardship. The bill gives the Internal Revenue Service the authority to waive the minimum funding requirement in cases where the application of this requirement would involve substantial business hardship to the employer and would be adverse to the interests of plan participants in the aggregate.

However, the waived contribution must be made up in level payments over a maximum of 15 years. To avoid the indefinite postponement of the fulfillment of the funding standards, the committee bill further provides that not more than five such waivers may be made in any 15-year period.

The committee also recognizes that multi-employer plans which are negotiated as a result of collective bargaining agreements may involve different considerations in regard to funding than individual employer plans. While it is the objective of the committee's bill to require adequate funding for multi-employer plans as well as for individual employer plans, the committee is aware that a number of multiemployer plans are not as well funded as they might be at the present time and that the application of the new funding standards to such plans without an adequate transition period might cause hardship and be detrimental to the interests of the employees covered by such plans. For this reason, if 10 percent or more of the number of employers contributing to a multi-employer plan demonstrate to the satisfaction of the Secretary of Labor that they would experience substantial business hardships if they were required to amortize past service liabilities and experience deficiencies over the periods of time specified by the bill (40 years and 20 years, respectively), and if this requirement would be adverse to the interests of plan participants in the aggregate, then upon

certification by the Secretary of Labor to the Secretary of the Treasury, these plans are to be allowed an additional 10 years to amortize such costs.

In addition, the Secretary of Labor is authorized to provide variances from the minimum funding requirements for multi-employer plans where he finds that the application of these requirements would increase costs to the extent that there would be a substantial risk to the voluntary continuation of the plan, impose unreasonable administrative burdens in regard to the operation of the plan and be adverse to the interests of plan participants in the aggregate.[12]

Your committee believes that the generally applicable funding standard, which requires past service liabilities to be amortized in level payments over a specified number of years, will generally provide an equitable and adequate approach to funding the vast majority of plans. However, in some cases where plans have very substantial vested liabilities and relatively small asset values, it appears desirable to require the unfunded vested liabilities to be amortized more rapidly than under the generally applicable funding standard. For this reason, your committee has provided a second funding standard, based on accrued unfunded vested liabilities. This standard is to apply in lieu of the generally applicable funding standard if it results in a higher annual contribution. Under this standard, the accrued vested liabilities of the plan and the value of its assets are determined. Where the former exceeds the latter, the contribution for that year must be sufficient to cover the first year's payment under a level annual payment schedule required to amortize the difference in 20 years. A new determination with respect to the applicability of this second funding standard is to be made in each of the succeeding years. It is contemplated that this funding standard will be required for only a small minority of qualified plans.

In general, for purposes of funding, the value of the plan's assets is to be determined on the basis of any reasonable actuarial method of valuation which takes fair market value into account under regulations prescribed by the Secretary of the Treasury or his delegate. However, to permit fixed obligations, which frequently are held until maturity, to be given stable values for funding purposes, the plan administrator is given the option of determining the value of a bond or other evidence of indebtedness (which is not in default as to principal or interest) on an amortized basis.

Your committee is aware that the actuarial assumptions made by actuaries in estimating future pension costs are crucial to the application of minimum funding standards for pension plans. This is because in estimating such pension costs, actuaries must necessarily make actuarial assumptions about a number of future events, such as the rate of return on investments (interest), employee future earnings, and employee mortality and turnover. In addition, actuaries must also choose from a number of funding methods to calculate future plan liabilities. As a result, the amount required to fund any given pension plan can vary significantly according to the mix of these actuarial assumptions and methods.

[12] The conditions under which such variances from the funding requirements may be granted are identical to those applying to variances from the minimum vesting requirements described above.

Conceivably an attempt might be made to secure uniform application of the minimum funding standards by authorizing the Secretary of the Treasury or some other authority to establish the specific actuarial assumptions and methods that could be used by pension plans. This would involve, for example, setting a specific rate of interest that could be used by certain pension plans or by specifying certain turnover rates for specified types of firms. However, the committee does not believe that this would be an appropriate procedure, since the proper actuarial assumptions may differ substantially between industries, among firms, geographically, and over time. Further, in estimating plan costs each actuarial assumption may be reasonable over a significant range and it would appear that the proper test would be whether all actuarial assumptions used together are reasonable. These considerations strongly indicate that any attempt to specify actuarial assumptions and funding methods for pension plans would in effect place these plans in a straitjacket so far as estimating costs is concerned, and would be likely to result in cost estimates that are not reasonable.

However, your committee's bill requires the actuarial assumptions of each plan to be certified by an actuary every three years (or more frequently if required by the Internal Revenue Service). These certifications will be reported to the Service. Moreover, in order to insure that such certification will be made by competent actuaries, the bill provides that the Secretary of the Treasury is to establish qualifications for actuaries and is to certify for practice before the Internal Revenue Service the persons who meet these standards. The Secretary of the Treasury is also to review the actuarial assumptions used by particular plans and an advisory board of actuaries is to be established to assist him in setting up general standards as to reasonableness of assumptions.

The bill also provides new and more effective penalties where employers fail to meet the funding standards. In the past, an attempt has been made to enforce the relatively weak funding standards existing under present law by providing for immediate vesting of the employees' rights, to the extent funded, under plans which do not meet these standards. This procedure, however, has proved to be defective since it does not directly penalize those responsible for the underfunding. For this reason, the bill places the obligation for funding and the penalty for underfunding on the person on whom it belongs—namely, the employer.

This is achieved by imposing an excise tax where the employer fails to meet the funding standards, which starts out at a relatively modest level and increases sharply where there is continued failure to make the indicated contributions. More specifically, if an employer fails to contribute sufficient amounts to meet the new funding requirements, he will be subject to a nondeductible excise tax of 5 percent per year on the amount of the underfunding for any year. If the employer fails to make up the underfunding by 90 days after original notification by the Internal Revenue Service (but with the Service in a position to grant extensions of time), then the employer is subject to a second level excise tax amounting to 100 percent of the underfunding. This determination by the Service is appealable to the Tax Court and no

assessment may be made until after the end of the litigation. Since the employer remains liable for the contributions necessary to meet the funding standards even after the payment of the excise taxes, it is anticipated that few, if any, employers will willfully violate these standards.

For plans adopted after January 1, 1974, which will have been adopted with knowledge of the new requirement, the effective date of the new funding requirements is the first plan year beginning after the date of enactment. For plans in existence on January 1, 1974, which are not maintained pursuant to collective bargaining agreements, the effective date of the minimum funding standards is deferred to plan years beginning after December 31, 1975. And for plans which are maintained pursuant to collective bargaining agreements, the minimum funding requirements take effect for plan years beginning after the expiration of the latest agreement (if this is after December 31, 1975) or after December 31, 1980, whichever is earlier.

Other provisions to protect covered employees and their beneficiaries.—In addition to the minimum participation, vesting and funding standards provided in the bill, your committee has adopted a number of specific provisions to protect the rights of employees and beneficiaries under qualified plans.

Qualified plans must pay benefits in the form of a joint and survivor annuity, giving the surviving spouse an annuity equal to at least 50 percent of the annuity paid during the joint lives, unless the participant elects in writing before the annuity starting date not to take a joint and survivor annuity.

Qualified plans must provide that retirement benefits may not be assigned or alienated, except for voluntary and revocable assignments of not more than 10 percent of the benefits in payment of premiums for life insurance and medical and hospital insurance and certain other items.

Provision is made to prevent mergers or consolidation of plans from reducing the rights of participants. This is achieved by specifying that immediately after the merger each participant would be entitled to receive a benefit equal to or greater than the benefit he would have been entitled to receive immediately before the merger had the plan been terminated.

Protection is given to retired individuals and individuals who are separated from the service of the employer against reductions in private plan benefits when social security benefit levels increase. In general, under present integration procedures, social security benefits attributable to employer contributions are treated as though they were part of the private plan. As a result when the level of social security benefits increases, some integrated plans have reduced the amount of the retirement benefits that they provide for covered employees.

Present law under administrative practice provides that qualified plans may not use increases in social security benefit levels to reduce the benefits that they pay where the employees concerned are retired and are already receiving integrated plan benefits. The bill codifies this treatment for retired persons. It also extends the prohibition against reducing plan benefits where social security benefit levels are increased to cases where the individuals concerned are separated from

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service prior to retirement and have deferred nonforfeitable rights to plan benefits. This provision is effective for increases in social security benefits which take place after the date of enactment or on the date of the first receipt of plan benefits or the date of separation from service (whichever is applicable) if that date is later.

These changes do not affect the ability of plans to use the integration procedures to reduce the benefits that they pay to individuals who are currently covered when social security benefits are liberalized. Your committee, however, believes that such practices raise important issues. On the one hand, the objective of the Congress in increasing social security benefits might be considered to be frustrated to the extent that individuals with low and moderate incomes have their private retirement benefits reduced as a result of the integration procedures. On the other hand, your committee is very much aware that many present plans are fully or partly integrated and that elimination of the integration procedures could substantially increase the cost of financing private plans. Employees, as a whole, might be injured rather than aided if such cost increases resulted in slowing down the rate of growth of private retirement plans.

In view of the serious issues involved in the integration of private plans with the social security system, your committee believes that it is desirable to postpone action on this issue pending further study of this problem. More specifically, your committee plans to consider this overall problem again at the earliest opportunity, possibly in connection with future tax reform or social security legislation. However, your committee believes that no further integration of social security and pension benefits should be allowed under any further regulations issued by the Secretary or his delegate at least until June 30, 1975.

Portability.—In view of the fact that ours is a highly mobile economy, characterized by high employee turnover rates, various proposals have been made to establish a system for the portability of vested rights to benefits from one plan to another when an employee changes jobs.

While the complete portability of vested rights to benefits from one pension fund to another is hard to achieve because of the numerous basic differences in private pension plans, your committee's bill contains a number of provisions which will achieve much of the advantage of portability. Under present law, when an employee changes jobs, it is already possible for funds representing his vested rights to benefits under his old employer's plan to be transferred to the retirement plan of his new employer without payment of tax on an optional basis—that is, if the employee and the administrators of the plans involved agree to the transfer. Your committee's bill adds another way in which individuals can transfer their retirement funds on a tax-free basis to a tax-exempt retirement account. It allows them to establish a new type of account called a "rollover account." Under the new arrangement, individuals will have the right to roll over into individual retirement accounts, without payment of current tax, complete distributions of funds financed by employers under qualified plans, H.R. 10 plans, as well as funds from individual retirement accounts, provided that the transfer into the new account is made within 60 days of the withdrawals of the funds from the old plans.

Provision also is made to supply adequate information to plan participants regarding their vested rights to retirement benefits so that they will not neglect to claim these benefits when they become eligible to receive them. In this connection, plan administrators are required to furnish each separated employee who has vested rights an individual statement showing the nature, amount and form of the deferred vested benefit to which he is entitled.

Also, in order to insure that employees will be fully alerted to their retirement benefits, the Social Security Administration will keep records regarding the vested rights of separated employees under single employer plans. Annual information pertaining to such vested rights will be forwarded by plan administrators to the Social Security Administration through the Internal Revenue Service. The Social Security Administration will then furnish this information regarding vested rights to individuals both on request and at the same time that official information is supplied to the employee or his beneficiary regarding social security benefits.

Because the furnishing of such information involves considerably more difficulties for multi-employer plans than for single-employer plans, the bill does not require multi-employer plans to supply individual statements regarding vested rights to separated employees; nor does it require multi-employer plans to file information showing the vested rights of separated employees. However, the Secretary of the Treasury after consultation with the Secretary of Health, Education and Welfare, may prescribe regulations requiring multi-employer plans to submit such information, to the extent it is found feasible.

Plan termination insurance.—Although your committee regards the development of an adequate program of plan termination insurance as essential to protect the rights of covered employees, the bill makes no provision for such plan termination insurance. This is because provision for plan termination insurance is made in H.R. 2, reported by the Committee on Education and Labor.

Fiduciary requirements.—Your committee's bill makes no change in the rules relating to fiduciaries of qualified retirement plans. As with plan termination insurance, this is not because your committee regards this matter as unimportant but rather because H.R. 2, reported by the House Committee on Education and Labor, contains provisions providing for additional rules regarding fiduciary requirements.

Enforcement.—Your committee's bill relies heavily on the tax laws in order to secure compliance with the new requirements that it imposes on pension plans. Plans, for example, are required to comply with the new coverage, vesting, and funding standards in order to qualify for favored tax treatment under the Internal Revenue Code. In addition, excise taxes are imposed for failure to meet the funding standards. As a result, these substantive pension provisions would be administered by the Internal Revenue Service.

Your committee believes that primary reliance on the tax laws represents the best means for enforcing the new improved standards imposed by the bill. Historically, the substantive requirements regarding nondiscrimination, which are designed to insure that pension plans will benefit the rank and file of employees, have been enforced through the tax laws and administered by the Internal Revenue Service. As

a result, the Internal Revenue Service is already required to examine the coverage of the retirement plans and their contributions and benefits as well as funding and vesting practices in order to determine that the plans operate so as to conform to these nondiscrimination requirements. Also, the Internal Revenue Service has administered the fiduciary standards embodied in the prohibited transactions provisions since 1954.

Your committee believes that the Internal Revenue Service has generally done an efficient job in administering the pension provisions of the Internal Revenue Code. The very extensive experience that the Service has acquired in its many years of dealing with these related pension matters will undoubtedly be of great assistance to it in administering the new requirements imposed by the committee bill.

However, because the bill increases the administrative job of the Service in this respect, your committee believes that it is desirable to add to its administrative capability for handling pension matters. For this reason, the committee bill provides for the establishment by the Internal Revenue Service of a separate office headed by an Assistant Commissioner of Internal Revenue to deal primarily with pension plans and other organizations exempt under section 501(a) of the Internal Revenue Code, including religious, charitable, and educational organizations. In order to fund this new office, the bill authorizes appropriations at the rate of $70 million per year for such administrative activities. It is intended that the Internal Revenue Service obtain from all appropriate pension administration sources annual statistical data to indicate the operations of the private retirement system for the purpose of evaluations and public information.

In addition to providing additional opportunities for redress in case of disagreement with the decisions of the Internal Revenue Service on pension matters, both employees and employers will be allowed to appeal determination letters issued by the Internal Revenue Service to the Tax Court after exhausting their remedies under the Internal Revenue Service administrative procedures.

Equalizing tax treatment; in general.—Another objective of the committee bill is to provide more rational and equitable tax treatment under retirement plans.

The committee believes that there is need on equity grounds to grant individuals who are not covered by any kind of qualified pension plan some of the tax advantages associated with such plans by providing them with a limited tax deduction for their retirement savings.

In addition, there is no justification for the present widely disparate treatment which places no specific limitation on the amount of deductible retirement plan contributions for corporate employees and at the same time limits the deductible contributions to pension plans on behalf of the self-employed to a maximum of 10 percent of earned income or $2,500 a year.

This unjustifiable difference in treatment has resulted in unduly large tax advantages for certain corporate employees; it also discriminates against the self-employed and has had the undesirable result of encouraging large numbers of self-employed people to incorporate merely to secure the larger tax advantages available with respect to corporate retirement plans. This includes large numbers of profes-

sional people who are now permitted by all 50 States and the District of Columbia to incorporate.

In view of these considerations, the committee has provided the following three changes which should be regarded as one package in the sense that the adoption of all three changes are needed at the same time in order to improve the tax laws in regard to pension plans.

Equalizing tax treatment; individual retirement plans.—Your committee's bill allows individuals who are not receiving the advantages of current coverage under qualified retirement plans to take deductions for annual contributions to a new type of individual retirement plan, up to 20 percent of earned income or $1,500, whichever is less.

These retirement plans will be available to all employees who are not active participants in a qualified retirement plan, in a governmental pension plan or in an annuity plan established by a tax-exempt or public educational institution under section 403(b) of the Internal Revenue Code.[13] Self-employed individuals who are not covered by qualified retirement plans (H.R. 10 plans) are also eligible to establish individual retirement plans for themselves.

The employer of any individual who establishes a personal retirement plan will be allowed to make tax deductible contributions to that individual retirement account on behalf of the employee which will not be currently taxable to the employee so long as the sum of the employee's own deductible contribution and the employer's contribution do not exceed the allowable 20 percent of compensation—$1,500 annual limit. Unions may also establish individual retirement accounts for their members.

In order to encourage the widespread use of such individual retirement plans, your committee has provided that the contributions to such plans can be invested in a wide range of investments, including special government retirement bonds which would be issued for this purpose, annuity contracts sold by insurance companies, mutual funds, corporate securities, banks and credit unions.

The earnings on the amounts put aside in the individual retirement accounts are to remain free of tax until they are distributed. Distributions from the individual retirement savings plans are to be taxable when received by the employee, generally upon retirement or upon death or disability. However, since the individuals' incomes will generally be relatively low when they receive such distributions, the latter will ordinarily be taxed at relatively low rates. Individuals will also enjoy tax savings from being able to defer payment of tax on the earnings of the retirement funds during the time they are retained in the tax-free plans.

Since the objective of the new provision is to encourage adequate provision for retirement needs, withdrawal of the retirement savings prior to age 59½ will result in a penalty tax equal to 10 percent of the amount of the premature distribution. However, early withdrawals are permitted without penalty where the taxpayer becomes disabled. In addition, to prevent the individual retirement savings plans from being used to postpone tax indefinitely, the retirement savings must either be distributed by the time the individual reaches age 70½ or distributed

[13] Such section 403(b) annuities confer most of the tax advantages associated with qualified pension plans.

over the lives or life expectancy of the individual and his spouse beginning no later than age 70½.

Your committee anticipates that by encouraging employers to make modest contributions initially for the retirement needs of their employees, such individual retirement plans will lead eventually to the establishment of a significant number of new qualified retirement plans by employers. An employer who believes he cannot afford the entire cost of a retirement plan can start by contributing small amounts for employee individual retirement accounts, can increase his contributions over the years (providing it does not exceed the 20 percent-$1,500 annual limits per participant), and then can subsequently convert to an employer-financed qualified plan. The provisions allowing individuals to deduct contributions within the specified limits to individual retirement plans generally take effect for taxable years beginning after December 31, 1973.

Equalizing tax treatment; increasing deductions for H.R. 10 plans.—Your committee's bill grants self-employed people tax treatment with respect to retirement plans (H.R. 10 plans) which is more nearly comparable to that now accorded to corporate employees under qualified retirement plans. This is achieved by increasing the maximum deductible contributions a self-employed individual is allowed to make on his own behalf to a qualified plan from the present level of 10 percent of earned income up to $2,500 a year to 15 percent of earned income up to $7,500 a year. For H.R. 10 plans which are of the defined benefit type, provision is made for applying comparable limitations on the benefits that may be paid to self-employed individuals under regulations to be prescribed by the Secretary of the Treasury or his delegate.

In keeping with the major objective of securing more uniform tax treatment of self-employed people and corporate individuals under qualified retirement plans, contributions or benefits for self-employed people under qualified plans are also made subject to the same overall limitations that are placed on contributions or benefits for regular employees under qualified plans.

Your committee has also made provision to allow self-employed individuals, whose earned income fluctuates sharply, declining to low levels in some years, to continue to set aside a specified minimum amount regularly for retirement under an H.R. 10 plan. This is achieved by permitting a self-employed individual to deduct contributions to such plans amounting to $750 or 100 percent of their earned income, whichever is less, even though these amounts are in excess of the regular deduction limits.

The new more liberal limitations on contributions or benefits for self-employed people under qualified plans are also to apply to shareholder employees of subchapter S corporations (small business corporations) who are generally subject to the same limitations as self-employed people under qualified plans. This means, for example, that contributions of up to the lesser of 15 percent of earned income or $7,500 a year may be made under qualified defined contribution plans on behalf of such shareholder employees without giving rise to current tax for them.

In addition, provision is made to insure that self-employed individuals who wish to utilize the full maximum tax allowance for their

own contributions will also provide significant pension contributions for their regular employees who are covered by the pension plan. This is achieved by allowing self-employed people to count no more than $100,000 of their earned income in computing pension contributions or benefits for themselves. This prevents a self-employed individual with an extremely large income from achieving the $7,500 maximum annual deduction for his own pension contribution through the use of a low contribution rate which would be detrimental to his employees since the pension contributions on their behalf are computed using the same contribution rate. For example, a self-employed individual who counts his first $100,000 of earned income for this purpose, must contribute to the plan at least 7.5 percent of the wages of his covered employees in order to be permitted a deductible contribution of $7,500 on his own behalf.

Finally, your committee adopted provisions to improve the effectiveness of H.R. 10 plans in achieving their retirement objectives and preventing abuses in the operation of such plans. Present law disqualifies the plan if willful contributions in excess of the allowable limits are made on behalf of owner-employees since such excess contributions unduly build up their tax-free accumulations in the plan. Experience has shown that this is not an adequate remedy since disqualification of the plan for excess contributions on behalf of owner-employees penalizes the regular employees who are not in any way responsible for the excess contributions. For this reason, instead of disqualifying the plan, where excess contributions are made on behalf of the self-employed individuals, the bill adopts a new more effective penalty, namely, a tax on the employer, amounting to 6 percent a year on the amount of the excess contribution. In addition, to discourage premature withdrawal of the H.R. 10 funds by owner-employees prior to retirement age, withdrawals before such individuals attain the age of 59½ (except in case of disability) are subject to an additional tax amounting to 10 percent of such premature contributions.

The new more liberal limits in regard to contributions on behalf of self-employed people under H.R. 10 plans are effective for taxable years beginning after December 31, 1973. However, the new limits on benefits under defined H.R. 10 benefit plans (which are designed to secure comparability with the limitations applying to H.R. 10 plans of the defined contribution type) the 6-percent tax on excess contributions for self-employed individuals and the 10-percent tax on premature withdrawals by owner-employees are effective for taxable years beginning after December 31, 1975.

Overall limitations on contributions and benefits for employees under plans.—In view of the vital role that the favorable tax treatment accorded under the Internal Revenue Code plays in stimulating the growth and development of nondiscriminatory retirement plans, your committee believes that it is essential to continue this treatment. In fact, as noted above, the bill adopted by your committee extends the favorable tax treatment more generally by increasing the allowable deductible contributions of self-employed people under H.R. 10 plans and by providing for the establishment of limited retirement savings plans for individuals who are not covered by qualified retirement plans

However, after careful consideration, your committee has concluded

that it is not in the public interest to make the substantial favored tax treatment associated with qualified retirement plans available without any specific limitation as to the size of the contributions or the amount of benefits that can be provided under such plans. The fact that present law does not provide such specific limitations has made it possible for extremely large contributions and benefits to be made under qualified plans for some highly paid individuals. While there is, of course, no objection to large retirement benefits in themselves, your committee believes it is not appropriate to finance extremely large benefits in part at public expense through the use of the special tax treatment. Moreover, the fact that there are no specific limits on the size of the contributions or benefits that may be made under qualified plans on behalf of highly paid employees discriminates against the self-employed whose contributions or benefits under H.R. 10 plans are limited by law. For this reason, your committee has provided specific limitations on the amount of contributions and benefits that can be provided for any one individual under a qualified plan. These limitations, which apply to both employees and self-employed people under qualified plans, have been designed to avoid abuse of the favored tax treatment to finance extremely large pensions. However, the limitations are generous enough to permit substantial retirement benefits which are adequate judged from any reasonable standard.

Under defined contribution plans (money-purchase pension plans and profit-sharing plans), the sum of the employer's contributions for the employee, a specified portion of the employee's own contributions, and any forfeitures allocated to the employee cannot exceed 25 percent of the employee's compensation or $25,000, whichever is less. These limits would also apply to contributions made to qualified plans of exempt organizations under section 403(b).

Your committee decided to take employee contributions to qualified plans into account for purposes of this contribution limit because the employee gets a tax advantage from the fact that the earnings on his contributions remain free of tax so long as they are kept in the plan, thus permitting a tax-free buildup of funds. However, unlike employer contributions under qualified plans, employee contributions are made out of taxed income. For this reason, for purposes of counting employee contributions for purposes of the 25 percent and $25,000 annual limits on contributions on behalf of any employee under a defined contribution plan, there is to be excluded the greater of (a) employee contributions amounting to 6 percent of compensation or (b) one-half of the employee's contributions.

For plans which provide defined benefits, your committee has phrased the limit in terms of the amount of annual benefits that may be paid to a participant. More specifically, the annual benefit paid under such plans cannot exceed 100 percent of the participant's average compensation for his highest 3 years of earnings (regardless of the age at which the benefits start) or $75,000 beginning at age 55 or later, whichever is less. Where the annual benefit starts before age 55, the $75,000 annual limit on benefits is adjusted downward actuarially. However, avoid any possible adverse effect on individuals with relatively modest retirement benefits, this benefit limitation is not to apply to retirement benefits which do not exceed $10,000 for the plan

year or for any prior plan year. This exception from the benefit limitation is available only where the employer has not at any time maintained a defined contribution plan in which the participant was covered.

While any specific dollar limit on the amount of benefits under qualified plans is necessarily a matter of judgment, your committee believes that the annual limitation of $75,000 at age 55 or later achieves a reasonable balance in view of the considerations involved. Benefits starting at any age are allowed to amount to as much as 100 percent of average pay during the high 3 years of earnings after study disclosed that any lower percentage limit would adversely affect individuals with relatively modest earnings who are covered under generous plans. Your committee believes that it would be unwise to discourage liberal benefits for such individuals.

As noted above, the $75,000 annual limit is applied to a benefit financed by the employer which is payable in the form of a straight life annuity beginning at age 55. Correspondingly, higher benefits may be paid to the extent that they are financed by employee contributions. No actuarial adjustment is required to be made in the maximum annual limit on benefits under defined benefit plans where ancillary benefits which are not related to retirement are provided. For example, no downward actuarial adjustment in the limit is to be required for disability benefits before normal retirement age. In addition, no downward adjustment is to be made for a normal joint and survivor feature.

Moreover, to prevent abuse, the full maximum benefit may be paid only to individuals who have 10 years or more of service. Where an individual has served for less than 10 years, the maximum permissible benefit is reduced proportionately.

The contribution and benefit limits are applied in a way which prevents any individual from securing higher limits for himself merely because he is covered by several retirement plans financed by the same employer. For purposes of applying these limits, all defined contribution plans established by an employer are combined and treated as one defined contribution plan, and all defined benefit plans established by an employer are combined and treated as one defined benefit plan.

Also, if an individual is covered by both a defined contribution plan and a defined benefit plan established by his employer, then an overall limit is applied to coordinate the two limits discussed above. In this case, the sum of (1) the percentage utilization of the maximum limit under the defined benefit plan and (2) the percentage utilization of the maximum limit under the defined contribution plan cannot exceed 140 percent. For example, if, under the defined benefit plan, the employee is to receive a pension of $75,000 a year (using up 100 percent of the defined benefits limit), then the maximum additions to his defined contributions plan may not exceed 40 percent of what would otherwise be his defined contributions limit. Put another way, this overall limit, if both types of plans are used equally, may be satisfied by using up 70 percent of the limits applicable to each type of plan.

Because of the vital importance of maintaining the real value of retirement benefits, the bill instructs the Secretary or his delegate,

through regulations, to make annual adjustments in the allowable limits to take account of increases in the cost of living. This includes adjustments in the $75,000 annual limit to benefits paid by defined benefit plans, the $25,000 limit to contributions under defined contribution plans and, in the case of a participant who was separated from service with the firm, the amount of his average earnings in his highest compensated 3 consecutive years of service.

Your committee has provided adequate time for adjustment to the new limits on benefits and contributions under retirement plans. In general, these limits apply to contributions made or benefits accrued in years beginning after December 31, 1975. However, to ease the transition to the new rules, an active participant in a defined benefit plan on October 2, 1973, will be permitted to receive an annual benefit, based on his annual rate of compensation on that date and the plan provisions in effect on that date, which exceeds $75,000 a year, provided the benefit does not exceed 100 percent of his annual compensation on October 2, 1973. Where this "grandfather" treatment is utilized, the cost-of-living adjustments in the limits, described above, are not available.

Finally, because the objective of the limits on contributions and benefits is to keep the tax advantages associated with qualified plans within reasonable bounds and not to restrict the amount of retirement benefits that may be paid to individuals under other arrangements, the bill specifically indicates that nothing in the provisions relating to such limits (or in the provisions of the bill which relate to minimum funding standards) is to be construed to require the disqualification of any plan solely because additional benefits are provided to the employee under nonqualified portions of the plans.

Lump-sum distributions under qualified plans.—Prior to the Tax Reform Act of 1969, lump-sum distributions made by qualified pension plans were generally taxed as long-term capital gains. Such capital gains treatment, however, had the disadvantage of allowing employees to receive substantial amounts of deferred compensation in the form of lump-sum pension distributions at more favorable tax rates than other compensation received currently. The 1969 Tax Reform Act sought to ameliorate this problem by providing that any part of such lump-sum distributions which represented employer contributions accrued in plan years beginning after 1969 was to be taxed as ordinary income rather than as capital gains. In addition, the 1969 Act provided a special 7-year averaging procedure for the portion of the lump-sum distribution taxed as ordinary income.

However, while the 1969 provisions were intended to provide more equitable treatment for such lump-sum pension distributions, they have not achieved their purpose. The Treasury has had great difficulty in providing regulations to carry out this provision. Problems have arisen both in determining the amount of the ordinary income element of a distribution and in determining the precise amount of tax imposed on account of the "ordinary income" element. Moreover, in practice the new proposed regulations have proved to be very complex and it is frequently maintained that individuals receiving lump-sum distributions have been unable to compute their taxes and that accountants and tax lawyers have been refusing to attempt the computations.

Your committee believes that this situation cannot be permitted to continue. For this reason, it has provided a new method of taxing such lump-sum pension distributions which is relatively simple and yet at the same time equitable. Under the new provision, that portion of the distribution representing pre-1974 value receives capital gains treatment. The balance of the lump-sum distribution is to be taxed as ordinary income under a separate tax schedule (the tax schedule applicable to single people) generally without reductions, exclusions, or consideration of the taxpayer's other income. However, to insure that the tax paid by lower income individuals on their lump-sum distributions will generally not be more than under present law, a special minimum distribution allowance is provided under the separate tax rate schedule. In addition, averaging relief is provided for the portion of the lump-sum distribution which is taxed as ordinary income under the separate tax rate schedule by providing 10-year averaging for such income. This in effect provides a tax payable at the time of the distribution, but no greater in amount than the taxpayer could expect to pay were the income to be spread over his remaining life expectancy.

The new treatment of lump-sum distributions from qualified retirement plans is to apply to distributions made after December 31, 1973, in taxable years beginning after that date.

Salary reduction plans.—Under present law, employee contributions to qualified retirement plans are generally made out of taxed income without any tax allowance. However, in certain cases, employees have entered into arrangements with employers to accept salary reductions in return for contributions on their behalf to qualified retirement plans. If employer contributions to such plans are not taxed currently to the covered employees, this results in tax advantages for the covered employees as compared with making their own contributions to the retirement plan. Until the latter part of 1972, the Internal Revenue Service under administrative rulings recognized such salary reduction plans, providing that the amount of the reduction was not in excess of 6 percent of compensation and the plan met certain antidiscrimination requirements.

However, on December 6, 1972, the Internal Revenue Service issued proposed regulations (37 Fed. Reg. No. 235, p. 25938) providing that amounts contributed by an employer to a retirement plan in return for a reduction in the employee's basic or regular compensation or in lieu of an increase in such compensation are to be considered to have been contributed by the employee and consequently be taxable income to the employee.[14]

The proposed regulations dealing with salary reduction plans raise major issues of tax policy. The basic question is the extent to which employees should be allowed to convert what would otherwise be a nondeductible employee contribution to a retirement plan to tax-deferred employer contributions on their behalf. This, in turn, involves issues regarding the equitable treatment under the tax laws of employee contributions and employer contributions to qualified retirement plans.

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[14] This ruling did not affect annuities provided employees of tax-exempt charitable, educational and religious organizations and employees of public educational institutions under section 403(b) of the Internal Revenue Code.

In view of these basic issues, your committee has concluded that it would be desirable for the Internal Revenue Service to defer action on its regulations until the Congress has had further opportunity to consider this matter. For this reason, the bill directs the Secretary of the Treasury to withdraw the proposed salary reduction regulations issued on December 6, 1972. Moreover, no other salary reduction regulations may be issued in proposed form before January 1, 1975, or in final form before March 16, 1976. The bill further specifies that until new salary reduction regulations have been issued in final form, the law with regard to salary reduction plans is to be administered along the lines of the administration before January 1, 1972. Any salary reduction regulations which become final after March 15, 1975, for purposes of individual income tax, are not to take effect before January 1, 1975.

Labor unions providing pension benefits.—Your committee considered a provision recognizing the right of tax-exempt labor unions to provide pension benefits to its members from funds derived from members' contributions and the earnings on the contributions, without affecting their tax-exempt status. However, the committee concluded that labor unions are permitted to provide benefits in this manner under present law and as a result it decided such a provision is unnecessary. The Internal Revenue Service has recognized this result in a published ruling which provides "that payment by a labor organization of death, sick, accident or similar benefits to its individual members with funds contributed by its members, if made under a plan which has as its object the betterment of the conditions of the members does not preclude exemption of the organization under section 501(c)(5) of the code." [15]

III. REVENUE EFFECT

There are several kinds of revenue effects which can be expected to arise from the H.R. 12481. These are summarized in table 4.

First, three provisions designed to equalize the tax treatment of pensions have an impact on tax deductions. These are the provisions raising the maximum deductible amount that the self-employed can set aside annually for their retirement; making provision for employee retirement savings deductions for those not now covered under qualified retirement plans, government plans, or section 403(b) plans; and a provision which limits the maximum retirement benefit and the maximum deductible contribution on behalf of employees.

Tax revenues are also affected by the modification of the tax treatment of lump-sum distributions.

Finally, a third category of revenue effect from the bill arises not because of any change in tax deductions as such, but rather because increased amounts may be set aside by employees for vesting and funding. The bill imposes additional requirements in the areas of vesting and funding which must be met if the present favorable treatment for pensions is to continue to be available. These new requirements may result in employers making larger contributions to retirement plans, resulting in larger income tax deductions.

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[15] Revenue Ruling 62–17, 1962–1, Cum. Bull. 87.

TABLE 4.—*Estimated annual revenue effect of H.R. 12481 at 1973 levels of income and employment*

	Millions
I. Provisions designed to equalize tax treatment under pension plans:	
Increase in maximum annual deductible contribution by the self-employed under H.R. 10 plans to the greater of $750 (but not in excess of earned income) or 15 percent of earned income up to $7,500[1]	−$175
Allowing an individual not covered by a qualified retirement plan, government plan, or section 403(b) plan to deduct annually up to the lesser of $1,500 or 20 percent of compensation for contributions by him or on his behalf to a tax exempt retirement account, annuity, or bond plan established by him or to certain trusts established by employers or associations of employees (long-run effect)[2]	−355
Limiting the maximum annual benefit under defined benefit plans to the lesser of $75,000 (where benefits begin at age 55 or later) or 100 percent of average compensation for the three consecutive calendar years aggregating the highest compensation and limiting annual contributions under defined contribution plans to the lesser of $25,000 or 25 percent of compensation, with a cost-of-living adjustment to the dollar ceilings in the case of active participants and to the resultant amount under the 100 percent rule in the case of participants separated from service[3]	+10
Total, provisions designed to equalize tax treatment under pension plans	−520
II. Revised tax treatment of lump-sum distributions from retirement plans (long-run effect)[4]	+60
III. Revenue effect of minimum vesting provision.[5]	
Case 1: Assuming that the additional employer contributions to pension plans resulting from the minimum vesting requirement constitute a substitute for cash wages	−130
Case 2: Assuming that the additional employer contributions to pension plans resulting from the minimum vesting requirement constitute an addition to cash wages	−265
Case 3: Assuming that benefit levels of pension plans are adjusted downward to absorb the additional employer contributions to pension plans resulting from the minimum vesting requirement	0

NOTE.—There will be some revenue loss from funding but data are not available to determine the extent of this loss.

[1] Maximum deductible amounts effective for taxable years beginning after Dec. 31, 1973; other provisions effective for taxable years beginning after Dec. 31 ,1975.

[2] Maximum deductible amounts effective for taxable years beginning after Dec. 31, 1973; other provisions effective on Jan. 1, 1974.

[3] Apart from the exception for certain active participants in corporate defined benefit plans on Oct. 2, 1973, effective for contributions made or benefits accrued in years beginning after Dec. 31, 1975.

[4] Effective for distributions or payments made in taxable years beginning after Dec. 31, 1973.

[5] Effective for plan years beginning after the date of enactment for plans adopted after Jan. 1, 1974. Effective for plan years beginning after Dec. 31, 1975, for plans in existence on Jan. 1, 1974, except: (1) for plans under collective bargaining agreements, effective for plan years beginning after the agreement termination date (but not before Dec. 31, 1975) of the last agreement relating to the plan or Dec. 31, 1980, whichever is earlier; (2) for labor organization plans, effective for plan years beginning after the date of the second convention of the organization (but not earlier than Dec. 31, 1975) held after the date of enactment or Dec. 31, 1980, whichever is earlier; and (3) where the plan administrator elects, effective for plan years beginning after the date of enactment but before the latest date available to each of the above categories of existing plans, respectively.

Provisions designed to equalize tax treatment of retirement plans.—It is estimated that the provision increasing the maximum annual deductible pension contribution by self-employed persons on their own behalf to the greater of $750 (but not in excess of earned income) or 15 percent of earned income (up to $7,500) will result in an annual revenue loss of $175 million.

The provision allowing an individual not covered by a qualified retirement plan, government plan, or section 403(b) plan to deduct annually the lesser of $1,500 or 20 percent of compensation for contributions by him or on his behalf to a tax exempt retirement account, annuity, or bond plan established by him (or to certain trusts established by employers or associations of employers) is estimated to involve a revenue loss amounting to $225 million for 1974 and rising to $355 million for 1977 (at 1973 income levels).

On the other hand, a revenue increase of $10 million a year at 1973 income levels is estimated to result from limiting the maximum annual benefit under defined benefit plans to the lesser of $75,000 (where benefits begin at age 55 or later) or 100 percent of average compensation for the three consecutive calendar years aggregating the highest compensation and limiting annual contributions under defined contribution plans to the lesser of $25,000 or 25 percent of compensation, with a cost-of-living adjustment to the dollar ceilings in the case of active participants and to the resultant amount under the 100 percent rule in the case of participants separated from service.

Altogether, when fully effective, these three provisions involve an estimated annual net revenue loss of $520 million.

Tax treatment of lump-sum distributions.—The revised tax treatment of lump-sum distributions from retirement plans (which provides for taxing that part of lump-sum distributions which is attributable to 1974 and later years as ordinary income subject to 10-year averaging) is expected to result in the long run in annual revenue gains amounting to $60 million a year based on 1973 levels of income.

Revenue effect of minimum vesting and funding provisions.—The new minimum vesting standards, which generally become effective for plan years beginning after 1975, will also involve an indirect loss of revenue, ranging from zero to an estimated $265 million a year (at 1973 income levels).

The minimum vesting requirement involves little or no revenue loss to the extent that the benefit levels of plans are adjusted to absorb the increased employer costs resulting from the requirement. This is because, in that event, the requirement would have no effect on the deductions taken for contributions to plans or on the taxable income of covered employees. If the additional amounts required to be contributed to pension plans as a result of the vesting standards are a substitute for cash wages, rather than a net addition to cash wages, the annual revenue loss is estimated at $130 million. This could occur, for example, if the additional employer payments into the pension plan are taken into consideration in setting future wage increases. In this event, the revenue loss results from the fact that the covered employees are permitted to postpone payment of tax on the employer contributions involved, instead of being required to pay tax currently, as would be the case had they received an equivalent amount of wages. Some part of this postponed $130 million of taxes presumably will be recovered in the future in tax payments on the benefits paid out by the plan.

The upper range of the estimate, $265 million, represents the revenue loss if it is assumed that the additional employer payments into the pension plans required by the new vesting standards constitute an

addition to the cash wages that will be paid in any event. In this case employers will have larger total wage bills (for the sum of cash wages and wage supplements) and hence will take larger tax deductions, giving rise to a $265 million revenue loss.

It appears that realistically there is likely to be a combination of the three effects suggested above.

No revenue estimate is given for the increased funding requirements under the bill. Data are not available which would make a reliable estimate of this type possible. However, it is believed that the minimum funding requirements will have a relatively modest revenue effect.

IV. GENERAL EXPLANATION

A. Participation and Coverage

(Secs. 1011, 1015, 1017, 1021, and 1023 of the bill and Secs. 401, 410, and 414 of the Code).

PLAN PARTICIPATION—AGE AND SERVICE REQUIREMENTS

Present law

The Internal Revenue Code does not generally require a qualified employer pension, profit-sharing, stock bonus, annuity, or bond purchase plan to adopt any specific age or service conditions for participation in the plan.[1]

Existing administrative practice allows plans to exclude employees who (1) have not yet attained a designated age or (2) have not yet been employed for a designated number of years, so long as the effect is not discriminatory in favor of employees who are officers, shareholders, supervisors, or highly compensated employees. Also, under administrative practice, a plan may exclude employees who are within a certain number of years of normal retirement age (for example, 5 years or less) when they would otherwise become eligible, if the effect is not discriminatory.

On the other hand, in the case of a plan benefiting owner-employees,[2] the plan must provide that no employee with 3 or more years of service may be excluded (sec. 401(d)(3)).

However, all plans may exclude part-time employees whose customary employment does not exceed 20 hours a week, and seasonal employees whose customary employment does not exceed five months in any calendar year.

General reasons for change

The committee believes that, in general, it is desirable to have as many employees as possible covered by private pension plans and to begin such coverage as early as possible, since an employee's ultimate pension benefits usually depend to a considerable extent on the num-

[1] As described below (2. Plans Where a Collective Bargaining Unit is Involved: Other Anti-discrimination Provisions), a qualified plan must meet certain coverage standards. Several of the alternative standards require certain percentages of employees, or of eligible employees, to be covered by the plan, but in such cases the employer is permitted to exclude employees who fail to meet the plan's service requirements, not exceeding five years of service.

[2] An owner-employee is a sole proprietor or a partner with a greater than 10-percent interest in capital or profits (sec. 401(c)(3)).

ber of his years of participation in the plan. This is particularly important for employees who, because of the nature of their employment, shift from employer to employer over their working careers. In addition, early participation tends to spread the cost of providing employees with adequate pensions more evenly over the various firms for which the employee has worked over his entire working career, instead of concentrating the cost on his last few employers.

Of course, the general desirability of early participation must be balanced against the cost involved for the employer. Also from an administrative standpoint, it is not desirable to require coverage of transient employees, since benefits earned by short-term employees, in any case, are quite small. On the other hand, the committee believes that overly restrictive age and service eligibility requirements can arbitrarily frustrate the effective functioning of the private pension system. In view of these considerations, the committee has concluded that it is appropriate to specifically limit age and service eligibility requirements which an employer may incorporate in a qualified pension plan.

Explanation of provisions

In general.—In view of the considerations outlined above, the committee bill provides that a plan which is qualified under the Code is not to require, as a condition of participation, more than one year of service, or an age greater than 25 (whichever occurs later).[3] The committee believes that this rule will significantly increase coverage under private pension plans, without imposing an undue cost on employers. From an administrative point of view, however, the rule will allow the exclusion of employees who, because of youth or inexperience with the job in question, have not made a career decision in favor of a particular employer or a particular industry. Also, to encourage plans which provide 100 percent immediate vesting, the committee bill provides that such plans may require 3 years of service (and on age of 25) as a condition of participation. The committee believes that these rules take full account of the reasonable administrative and cost needs of plans to exclude employees in high turnover or high cost of benefit categories, and there is no authority in the tax law, apart from the specific provisions of the bill (including the maximum age provision discussed below), to allow qualified plans to exclude employees on account of age or service.

Year of service defined.—For purposes of the vesting and participation rules, the committee bill provides flexibility by indicating that the Secretary is to define a "year of service" by regulations in a manner which provides for its determination on a reasonable and consistent basis. For example, the regulations could specify that a plan could provide that each employee who had met the age and service requirements was to begin his participation on the anniversary date of his own employment, or that all eligible employees would be admitted on the anniversary date of the plan, or that each employee would be covered under the plan on the first quarterly anniversary date of the plan following the anniversary date of his employment.

[3] This rule applies whether or not the plan is a trusteed plan. That is, a plan funded through purchase of annuities from an insurance company is subject to these rules, as is a plan with investments managed by a trustee.

However, to ensure that no abuse situation arises, the bill provides certain guidelines as to what constitutes a "reasonable" definition of a year of service. For example, under the bill, the plan's definition of a year of service would have to be such that no employee with more than 17 months of continuous [4] service could be excluded from the plan on account of service; moreover, the average employee (assuming hypothetically that employees were hired at the same rate each day throughout the year) could not have a wait of more than 12 months for participation. Of course this definition does not apply for purposes of benefit accrual, and a plan may use any reasonable definition of "year of service" for this purpose that is consistently applied, so long as the plan meets the antidiscrimination requirements of the law.

There are some industries whose normal work schedules are substantially different than those of more typical businesses. To deal with this problem, the committee bill provides that the regulations defining "year of service" are to take this factor into account. For example, the regulations might provide that in appropriate cases 100 hours of employment constitute a month, or 1,000 hours of employment constitute a year.

Participation of temporary and seasonal employees.—In the case of the seasonal employee, whose customary employment is at least 5 months, his normal season will be treated as a year. For example, if there is a 5-month fishing season in a certain area, and a fisherman is employed throughout the season by a company having a qualified pension plan, then, on the anniversary date of his employment, the fisherman is to be treated under the plan as though he had at least twelve months of continuous service for purposes of determining his right to participate in the plan.

Break in service.—The bill also provides a series of rules as to the effect of an employee terminating his service with an employer but then subsequently returning. These determinations are used in deciding whether the vesting schedule is to start over after the participant's break in service or to continue as of its status when the break in service first occurred. The rules governing the treatment of breaks in service set forth below in general are designed to place the employee, when he returns to service, at the same point in the vesting schedule that he was before the break in service, insofar as this is practicable without creating serious administrative problems. The bill provides for four interrelating rules.

First, where a break in service has occurred, a plan can provide that where an employee subsequently returns to service, the earlier service is not added to the more recent service until the employee has been back at least a year. This rule makes it unnecessary to search out the extent of prior service in the case of employees who return but stay for only a short period of time.

A second rule provides that where an employee has been in service at any time in the past for a sufficiently long period of time to obtain a vested right to 50 percent or more of the accrued benefits from employer contributions, upon return to employment his prior service,

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[4] The term "continuous" is also to be defined in regulations to take account of the problem of seasonal employees, as well as factors such as sick leave, holidays and vacation periods, etc.

before the break in service, is to be taken into account in applying the participation and vesting rules to his current situation. (The prior service would satisfy the plan's service requirements for participation.) The first rule set forth above, however, provides an exception to this rule.

Third, in the case of an employee who has completed 4 consecutive years of service before the break in service occurs, except as provided in the first rule above and the fourth rule below, service before the break is to be taken into account upon the employee's return to employment.

Fourth, in the case of an employee who has a break in service for a period of six years or more, service performed by the employee before the break in service need not be taken into account under the plan except in the case of employees coming under the second rule set forth above—that is, only where an employee has a vested right to 50 percent or more of employer contributions. Thus, where longer breaks in service occur, it will not be necessary to take into account prior service except in those cases where the employee had previously built up vested rights to the level of 50 percent or more.

Joint regulations on a year of service.—The regulations as to the meaning of a year of service, including those relating to breaks in service, are to be effective for plan years beginning after December 31, 1975, only if approved by the Secretary of Labor. Where the bill's provisions apply before that date (as in the case of new plans and plans which elect earlier dates), then regulations may be prescribed without the necessity of approval by the Secretary of Labor. However, those regulations are not to apply beyond the December 31, 1975, plan year cutoff date.

Other rules.—The committee intends that Treasury regulations specify the extent to which service with a predecessor of the employer is to be counted for purposes of the eligibility requirements. In the case of a multiemployer plan, service with any employer who was a member of the plan is to be counted towards an individual's participation requirement (sec. 1015 of the bill).

For purposes of these rules (and elsewhere in the bill), a "multiemployer plan" is a plan maintained pursuant to a collective bargaining agreement, to which more than one employer is required to contribute, and to which no one employer makes as much as 50 percent of the contributions. (After a plan has once qualified as a multiemployer plan, however, up to 75 percent of the contributions may be made by a single employer without affecting the multiemployer status of the plan.) In addition, the Secretary of his delegate is authorized to prescribe regulations establishing certain other requirements in the case of a multiemployer plan, dealing, for example, with the extent to which the plan should be liable to make benefit payments to participants, regardless of whether the participant's employer continues to make contributions under the plan.

Maximum age requirement.—In order not to discourage the hiring of older employees, the bill would permit a defined benefit pension plan to exclude employees who are within 5 years of normal retirement age at the time they would otherwise become eligible to participate if the exclusion does not result in a situation which is in-

consistent with the coverage requirements of the tax law. Also, the plan may provide that the employee is not eligible to begin drawing retirement benefits until 10 years after he began to participate in the plan of participation (sec. 1021 of the bill). If a maximum age provision were to be prohibited, in the case of a defined benefit plan the cost considerations of providing a defined benefit to an older employee might discourage the hiring of the elderly. In the case of a defined contribution plan (such as profit-sharing plan or a money purchase pension plan), however, these cost considerations do not generally apply, and the committee therefore did not see why a maximum age limitation of this type should be permitted.

H.R. 10 plans.—The provisions of present law with respect to coverage under an owner-employee (H.R. 10) plan are not changed by the committee's bill. Present law already requires relatively early participation (after 3 years of service) and 100-percent immediate vesting in the case of owner-employee plans. The committee concluded that the retention of these provisions of present law was needed to protect the rights of employees in such cases. H.R. 10 plans will use the same rules as to a year of service, seasonal or part-time service, and breaks in service as will apply under the committee bill to corporate plans.

Government and church plans.—These provisions (as well as the corresponding provisions of the bill relating to vesting and funding) do not apply in the case of government plans, including the Federal civil service plan, and plans sponsored by State and local governments (including the District of Columbia), and any plan to which the Railroad Retirement Act applies. These plans may continue to remain qualified by continuing to meet the current law requirements (as in effect on the day before enactment). Also, new government plans may be qualified if they meet the requirements of present law. However, the Committee on Ways and Means and the Committee on Education and Labor are to study the extent to which it would be desirable to bring government plans under Federal participation, vesting, funding, and fiduciary standards, as well as matters affecting mobility of government employees and those employed under Federal procurement, construction, or research contracts or grants. The committees are to report to the House of Representatives no later than December 31, 1976.

Likewise, church plans (and plans of associations or convention of churches) will be exempt from the requirements of the bill unless the church files an election, in a form and manner to be prescribed in regulations, electing to come under the participation, vesting, and funding provisions of the bill (and the other rules which relate to these provisions), rather than to comply with the requirements of present law. Once an election is filed, however, it will be irrevocable. Generally, a "church plan" includes any plan maintained by a church or association or convention of churches, other than a plan primarily for benefit of employees in an unrelated trade or business of the church, or a multiemployer plan which includes employers which are not churches. However, for purposes of this definition of "church plan", if the plan was in existence on January 1, 1974, and at that time covered employees of another organization exempt from tax (under sec. 501) which was an agency of the church, then employees of the agency are to be considered as employees of the church.

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PLANS WHERE A COLLECTIVE BARGAINING UNIT IS INVOLVED; OTHER ANTIDISCRIMINATION PROVISIONS

Present law

Under present law (sec. 401(a)(3)), a qualified retirement plan must cover either (1) a specified percentage of all employees (generally, 70 percent of all employees, or 80 percent of those eligible to benefit under the plan if at least 70 percent of all employees are eligible) [5] or (2) such employees as qualify under a classification which is found by the Internal Revenue Service not to discriminate in favor of employees who are officers, shareholders, supervisors, or highly compensated employees. (A plan is not *per se* discriminatory for purposes of these rules merely because it is limited to salaried or clerical employees.)

Also, under present law, either the contributions or the benefits provided under a qualified plan must not discriminate in favor of employees who are officers, shareholders, supervisors, or highly compensated employees.

General reasons for change

Where employees covered under a collective bargaining unit prefer current compensation or some other form of benefits to coverage under a pension plan, employers sometimes are unable to establish a plan for other employees because the percentage requirement cannot be satisfied if the bargaining unit employees are not covered. It is then necessary for the plan to qualify as one which has coverage requirements that do not discriminate. The Service's approach (see Rev. Rul. 70–200, 1970–1 CB 101), which has generally been upheld by the courts, has been to look at the compensation of the group which is covered under the plan, and to allow the plan to qualify if the compensation of most of the participants is substantially the same as that of the excluded employees, the plan covers employees in all compensation ranges, and employees in the middle and lower ranges are covered in more than nominal numbers. Where most of the lower-paid nonsupervisory personnel are members of a collective bargaining unit which elects not to be covered by a pension plan, the remainder of the employees may include relatively large percentages of supervisors or highly compensated employees. As a result, under present law it may be impossible—because of the antidiscrimination requirements—to establish a qualified plan for the remaining employees.

Your committee believes that this situation can result in a hardship, where nonunion employees of an employer are forced to forego the benefits of a pension plan merely because those employees who are covered under a collective bargaining agreement choose nonpension benefits, or nonpension benefits plus pension benefits at a lower level than those provided nonunion employees. At the same time, the committee is concerned that any change in the law should not result in a situation where an employer might be able to exclude these employees from the pension plan without compensation for this in the form of other types

[5] In applying these numerical tests under present law, there are excluded employees who have been employed not more than a minimum period prescribed by the plan (up to 5 years), part-time employees (customary employment for not more than 20 hours in any one week), and seasonal employees (those whose customary employment is for not more than 5 months in any calendar year).

of benefits. To deal with this situation, the committee bill provides that collective bargaining employees may be excluded for purposes of applying the coverage test, where the agreement does not provide that the union employees are to be included in the plan and there is evidence that retirement benefits have been the subject of good faith bargaining between the union employees and the employer.

Explanation of provisions

Collective bargaining unit.—The committee bill eases the application of the provisions of existing law by providing that employees covered under a collective bargaining agreement can be excluded for purposes of the coverage requirement if the employees are excluded from the plan and there is evidence that the retirement benefits have been the subject of good faith bargaining between the union employees and the employer.

If pension plan coverage had been discussed with the representatives of the union employees and no pension coverage was provided, either because the union employees were covered under a union plan (which might or might not offer comparable benefits to those provided under the employer plan), or because the employee representatives opted for higher salaries, or other benefits, in lieu of pension plan coverage, or for some other valid reason, then it would be permissible to exclude those union employees from the calculations. In effect, the collective bargaining agreement employees could then be excluded from the plan. Since this provision is intended to relax the coverage requirements of present law, in circumstances where the union employees elect not to participate in the plan, it follows, of course, that any plan which meets the coverage rules of present law, even though it excludes certain union employees, would not be adversely affected as to its tax-qualified status by this provision.

The committee anticipates that in any case where collective bargaining unit employees were excluded from a plan under this provision, the Internal Revenue Service will receive information as to the justification for the exclusion before ruling that the plan is qualified. There is no requirement that the collective bargaining agreement specifically state that the employees have elected to be out of the plan or to take a lower level of benefits. However, there must be evidence that the retirement benefits have been the subject of good faith bargaining between the union employees and the employer.[6]

The committee bill also provides that a plan is not to be considered discriminatory because it covers air pilots represented in accordance with the Railway Labor Act while not covering other employees working for the same employer if it covers a sufficient number or a nondiscriminatory cross-section of such pilots.

Nonresident alien employees.—The bill provides for the exclusion, for purposes of applying the coverage requirements and the antidiscrimination requirements, of those employees who are nonresident

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[6] Once this issue had been negotiated, the union and the employer would not be required under this provision to renegotiate the issue at each bargaining session. However, the committee has been informed that it would constitute an unfair labor practice, within the meaning of the Federal labor laws, for an employer to refuse to negotiate in good faith with a labor union concerning retirement benefits. An example of good faith bargaining would include agreements or memoranda of understanding between railway companies and their employee representatives designed to effect changes in the Railroad Retirement Act of 1937 or Chapter 22 of the Internal Revenue Code, or both.

aliens with no United States income from the employment in question. It was believed that the United States tax laws should not impede appropriate pension plan benefits for United States citizens or persons with United States earned income, merely because comparable benefits were not afforded to nonresident aliens with no United States income from the employment in question. Also, the mere processing of such cases would take an inordinate amount of time because of the complexity of applying rules to integrate the appropriate foreign equivalent of Social Security with the benefits or contributions provided by the employers under such plans.

Affiliated employers.—The committee bill also provides that in applying the coverage test, as well as the antidiscrimination rules, the vesting requirements, and the limitations on and benefits, employees of all corporations who are members of a "controlled group of corporations" (within the meaning of sec. 1563(a)) are to be treated as if they were employees of the same corporation. Thus, if two or more corporations were members of a parent-subsidiary, brother-sister, or combined controlled group, all of the employees of all of these corporations would have to be taken into account in applying these tests. A comparable rule is provided in the case of partnerships and proprietorships which are under common control (as determined under regulations), and all employees of such organizations are to be treated for purposes of these rules as though they were employed by a single person. The committee, by this provision, intends to make it clear that the coverage and antidiscrimination provisions cannot be avoided by operating through separate corporations instead of separate branches of one corporation. For example, if managerial functions were performed through one corporation employing highly compensated personnel, which has a generous pension plan, and assembly-line functions were performed through one or more other corporations employing lower-paid employees, which have less generous plans or no plans at all, this would generally constitute an impermissible discrimination. By this provision the committee is clarifying this matter for the future. It intends that prior law on this point be determined as if this provision had not been enacted.

At the same time, however, the committee provision is not intended to mean that all pension plans of a controlled group of corporations or partnerships must be exactly alike; or that a controlled group could not have pension plans for some corporations but not others. Thus, where the corporation in question contains a fair cross-section of high- and low-paid employees (compared to the employees of the controlled group as a whole), and where the plan coverage is nondiscriminatory with respect to the employees of the corporation in question, it is anticipated that the Internal Revenue Service would find that the plan met the antidiscrimination tests, even though other corporations in the controlled group had a less favorable retirement plan, or no plan at all. On the other hand, if, looking at the controlled group as a whole, it were found that a disproportionate number of highly compensated employees were covered under the plan of the corporation in question, or that the average compensation of covered employees was substantially higher in that plan than the average compensation of noncovered employees, it would be anticipated that the plan would not be

found to be qualified, because the corporation does not contain a fair cross section of the controlled group employees.

Supervisory employees.—Under the committee bill, the category of "supervisors" is to be dropped from the list of personnel which a plan may not discriminatorily favor. The committee has been informed by the Treasury Department that all persons who are supervisors within the intent of present law also are officers, shareholders, or highly compensated employees, and that as a result this deletion will result in no substantive change in the antidiscrimination provisions of present law.

Coverage of temporary and seasonal employees.—In applying the coverage rules, the bill makes several changes from present law. In applying the 70 percent and 80 percent coverage tests, employees who fail to meet the minimum age and service requirements prescribed by the plan may be excluded (assuming these employees are actually excluded from the plan). These requirements may not be more than the top limit of one-year-service and 25-year-age requirements (or 3-year-service, immediate-full-vesting, and 25-year-age alternative) described above with respect to participation. Of course, the plan may provide lesser age and service requirements.

Present law permits exclusion, in applying the coverage calculations, of employees whose customary employment is for not more than 5 months in any calendar year; the bill retains the 5-month period but permits computations to be made on the basis of any 12-month period (not merely the calendar year) depending upon the period specified in the plan itself. Part time employees (as defined in regulations) may also be excluded from the plan.

Work product contributions.—In some industries, contributions may be made under a plan based on the work product of an individual who is not a participant (for example, contributions based on tonnage of minerals mined or processed). Obviously, such an individual may be excluded under the plan, notwithstanding the fact that contributions are made based on his work, if the individual fails to meet the minimum age or service requirements, or other lawful conditions that the plan imposes for participation. On the other hand, a person could be a participant in a plan even though neither he nor his employer make contributions on his behalf.

Effective dates

These provisions apply generally to plan years beginning after the date of enactment of the bill. However, to allow time for amendment for plans in existence on January 1, 1974, the provisions are to take effect in these cases for plan years beginning after December 31, 1975, unless the plan administrator makes an irrevocable election to have the provisions apply sooner (under regulations prescribed by the Secretary or his delegate), in which case the provisions will take effect at the beginning of the first plan year which occurs after the election.

Where the plan is subject to the provisions of a collective bargaining agreement in effect on January 1, 1974, the effective date is further postponed until the expiration of the collective bargaining agreement (or the expiration of the last relevant agreement in the case of a multiemployer plan or a single plan subject to more than one collective bargaining agreement), but without regard to any extension made after the date of enactment. For this purpose, a collective bargaining agree-

ment will not be considered as terminated if it can be (or is) reopened with respect to relatively narrow issues only. For example, a collective bargaining agreement would not be considered as being terminated for this purpose if it can be reopened with respect to the benefit payable to a surviving spouse, if it can be reopened because of a change in payments with respect to voluntary coverage under Part B of the Medicare benefits under the Social Security Act, or if it can be reopened to increase benefits with respect to a quite limited group of employees.

A question has arisen as to how the effective date rules are to be applied to a plan which includes employees subject to one or more collective bargaining agreements and also employees not under any such agreement. The intent is that the presence of an insignificant number of union members as participants in a plan is not to be sufficient to delay the effective dates for an additional 5 years. On the other hand, the presence of a small number of nonunion participants should not force the untimely renegotiation of labor-management contracts. As a result, your committee intends that a plan is to be regarded as maintained pursuant to a collective bargaining agreement if (1) either the contribution levels or the benefit levels under the plan are to be determined under the agreement and (2) at least 25 percent of the participants are members of the unit of employees covered by the agreement. In addition, where an employer has one plan for collective bargaining unit employees and another plan for other employees, but those plans are essentially the same with regard to benefits and contributions, then the two will be considered as one for purposes of applying the rule described above as to when a plan with both union and nonunion participants is to be entitled to delayed effective date provisions.

In the case of a plan maintained by a tax-exempt (under sec. 501 (c)(5)) labor organization for its own employees, the effective date is postponed to the first plan year following the date on which the second convention of the organization is held after the date of enactment. But, in any event, all plans (including those subject to existing collective bargaining agreements) are to be subject to these provisions in plan years beginning after December 31, 1980.

An existing plan which would be entitled to a delayed effective date for the new participation, vesting, funding, etc. provisions is to be permitted to elect to have all those provisions apply sooner. Any such election must be made under Treasury regulations, must not be piecemeal (i.e., it is not permitted to be made for, say, vesting, without also applying to participation, funding, etc.), and is irrevocable.

Revenue effect

The revenue effect of these provisions is expected to be minimal.

B. Vesting

(Secs. 1012, 1014, 1015, 1017, 1021, 1023, and 1024 of the bill and secs. 401, 411, 414, and 6690 of the Code.)

Present law

Plans which qualify under the Internal Revenue Code are now required to provide vested (i.e., nonforfeitable) rights to participating

employees when they attain the normal or stated retirement age. Employees must also be granted vested rights if the plan terminates or the employer discontinues his contributions.

However, qualified corporate plans are generally not required to provide vested rights to participating employees before normal retirement age unless this is considered to be necessary—in view of the likely pattern of employee turnover—to prevent discrimination against the rank and file employees in favor of officers, shareholders, supervisors, or highly paid employees. In other words, preretirement vesting is required only where its absence would cause discrimination in favor of officers, etc., who could be expected to remain with the firm long enough to retire and qualify for benefits, while the rank and file employees would continually be separated from the firm and lose their benefits.

Under an owner-employee plan,[1] the rights of all employees must vest in full as soon as they become participants (sec. 401(d)(2)(A)).

General reasons for change

Unless an employee's rights to his accrued pension benefits are nonforfeitable, he has no assurance that he will ultimately receive a pension. Thus, pension rights which have slowly been stockpiled over many years may suddenly be lost if the employee leaves or loses his job prior to retirement. Quite apart from the resulting hardship, your committee believes that such losses of pension rights are inequitable, since the pension contributions previously made on behalf of the employee may have been made in lieu of additional compensation or some other benefits which he would have received.

Today, slightly over two-thirds of the private pension plans provide some vested rights to pension benefits before retirement. However, as a general rule, employees do not acquire vested rights until they have been employed for a fairly long period with a firm or are relatively mature. Since there is no general applicable legal requirement for preretirement vesting, some plans do not offer this type of vesting at all, and among those plans which do, there is no uniformity in the vesting rules as provided. At present, only one out of every three employees participating in employer-financed plans has a 50-percent or greater vested right to his accrued pension benefits. Even for older employees, a substantial portion do not have vested rights. For example, 58 percent of covered employees between the ages of 50 and 60, and 54 percent of covered employees 60 years of age and over, still do not have vested rights to even 50 percent of their accrued pension benefits.[2] As a result, even employees with substantial periods of service may lose pension benefits on separation from employment. Extreme cases have been noted in which employees have lost pension rights at advanced ages as a result of being discharged shortly before they would be eligible to retire. In addition, your committee believes that more rapid vesting is desirable because it will improve the mobility of labor, and in this manner promote a more healthy economy.

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[1] An owner-employee is a sole proprietor or a partner with a greater than 10-percent interest in capital or profits (sec. 401(c)(3)).

[2] U.S. Treasury Department—Fact Sheet, Pension Reform Program, as reprinted in Material Relating to Administration Proposal Entitled the "Retirement Benefit Tax Act," Committee on Ways and Means, 93d Cong., 1st sess., p. 37, Table B.

For reasons indicated above, your committee concluded that it is necessary and desirable to provide a minimum standard of vesting for all qualified pension plans. Clearly, however, it would be counterproductive to increase employer costs by more rapid vesting to such an extent as to significantly curtail the creation of new retirement plans (or to significantly curtail the increase of benefits in existing plans). The committee bill deals with this problem by requiring that all qualified plans must meet one of three minimum standards for vesting.

Explanation of provisions

General rule.—The committee bill provides that a qualified plan would have to meet one of three vesting standards with regard to benefits derived from employer contributions:

1. a graded vesting standard, under which the employee must be at least 25 percent vested in his accrued benefit after 5 years of covered service, with a gradual increase in this percentage in subsequent years, so that the employee must be 100 percent vested after 15 years of service;
2. full vesting after 10 years of covered service; or
3. a "rule of 45", under which an employee with 5 or more years of covered service must be at least 50 percent vested in his accrued benefit when the sum of his age and years of covered service total 45, with 10 percent additional vesting for each year thereafter.

Whichever of these alternatives is adopted, each employee would have to be fully and immediately vested in his accrued benefit derived from his own contributions.[3]

It should be made clear that the standards provided in the committee bill are only minimum standards. The bill's provisions are not intended to prohibit plans with more rapid vesting than that required under the standards in the bill.

Your committee believes that the new vesting rules should provide flexibility, so as to allow plans to choose from several reasonable standards a vesting schedule best suited to the needs of the particular business, and so as not to disrupt existing plans which already have provided reasonable vesting under one of several formulas. In addition, a transition rule and delayed effective dates are provided, so that plans may be amended in an orderly manner to come into compliance with the new minimum standards. Compliance with any of these standards, together with continued vitality of the antidiscrimination standards of the Internal Revenue Code, should afford substantial protection to employees against possible loss of their pension rights.

Graded vesting.—One of the alternatives under the committee bill provides that a qualified plan (whether trusteed or insured) would be required to give each participant vested rights to at least 25 percent of his accrued benefit from employer contributions after 5 years of service, plus 5 percentage points a year for each of the next 5 years and 10 percentage points a year thereafter. This would mean that there must be 100 percent vesting after 15 years of covered service.

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[3] Thus, in general, the rules described hereafter relate only to benefits derived from employer contributions.

This approach has the advantage of providing some vesting at a relatively early point in the employee's career. Thus, if the employee changes jobs after 5 years of service, he would be protected in his rights to at least some part of his accrued benefit. This rule (and, to a lesser extent, the 10-year 100-percent vesting rule and the rule of 45 vesting rule) proceeds on the assumption that some part of the obligation to provide reasonable retirement benefits should be shifted from the employee's last employer and should be shared by those who employed him earlier in his working career.

Also, because vesting occurs gradually, this alternative tends to bring down the cost of the vesting requirement to manageable levels by minimizing the cost of establishing a new plan or improving benefits under an existing plan. By avoiding the "notch" effect of an employee becoming entitled to too much of his vested rights in any one year, it avoids giving the employer an incentive to dismiss an employee rather than to absorb the sharp increase in pension plan costs that would result from a sudden increase in the vesting percentage after a number of years of service.

Ten-year 100-percent vesting.—Another alternative under the committee bill provides that a qualified plan could meet the vesting requirements by giving each participant vested rights to 100 percent of his accrued benefit derived from employer contributions after 10 years of service.

This approach avoids the recordkeeping and other administrative costs involved in accounting for partially vested rights. In the case of the employee who serves for 10 years, this alternative provides greater vesting protection than the graded vesting rule (discussed above) or, in general, the rule of 45 (discussed below).

The "rule of 45".—The third alternative under the bill, known as the rule of 45, would require that a plan provide each employee with vested rights to at least 50 percent of his accrued benefit when the sum of his age and years of covered service equals 45 (subject to a minimum service requirement of 5 years), with at least 10 percent additional vesting for each year of service thereafter.

The age-weighted approach has the advantage that it provides more protection to the older worker, who is closer to retirement, and who may not get another chance to earn a pension if he leaves his employment prior to retirement.[4] For this reason, your committee believes that the rule of 45 should be available as an alternative for those plans which would prefer to take an age-weighted approach.

Transition rule.—Your committee has concluded it is important that all qualified plans ultimately meet one of the three minimum standards in the bill. However, to impose the full force of these standards on existing plans without some transition period would, in some cases, subject these plans to substantial additional costs to pay for the required vesting, possibly causing a reduction of benefits in some plans, or even plan termination. To ease the cost factor in the case of plans already in existence which have not previously been subject to vesting requirements such as those set forth in the committee bill, the bill

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[4] Under the present tax law, all rights must be fully vested when the employee attains the normal or stated retirement age, but an older employee who terminates his service prior to reaching retirement age generally does not have to be vested under present law (except to prevent discrimination).

provides a transitional rule under which plans actually in effect on December 31, 1973,[5] would have a reduced vesting requirement for the first 5 years to which the new rules apply.

During the first year to which the bill's vesting standards apply, the plan would have to provide at least 50 percent of the regular requirement under the applicable vesting schedule—this 50-percent level would have to then be increased by 10 percentage points a year, so that the new rules would fully apply in the sixth year after the effective date. For example, under the graded vesting approach, during the first year in which the rules were applicable, an employee with 5 years of covered service would be at least 12.5 percent vested in his total accrued benefit (50 percent of the 25-percent requirement which is generally to apply after 5 years of service); this would increase to 18 percent the next year as the next step in the transition period was reached and also as the employee moved along the graded vesting schedule (60 percent of 30 percent), 24.5 percent the next year (70 percent of 35 percent), 32 percent the next year (80 percent of 40 percent), 40.5 percent the next year (90 percent of 45 percent), 50 percent the next year (100 percent of 50 percent), and by an additional 10 percentage points each year thereafter under the fully effective graded vesting schedule alternative of the bill. By use of this gradual approach, your committee believes that it will be possible to implement the new rules with a minimum of disruption to existing plans.

Preparticipation service.—Once an employee becomes eligible to participate in a pension plan, generally all his years of service with an employer, including preparticipation service, are to be taken into account for purposes of determining his place on the vesting schedule.

However, the plan may ignore service during a period for which the employee decided not to make contributions to a plan requiring employee contributions. Also, service need not be taken into account for periods for which the plan employer did not maintain the plan (e.g., periods before the plan was established or after the employer discontinued contributions but the plan was kept in existence for the purpose of paying already-earned benefits when due).

The committee bill also provides that for purposes of the vesting schedule, service before age 25 may be ignored whether or not the employee was a participant in the plan. This will have the effect of not discouraging plans from providing immediate participation and accrual of benefits for all employees. For example, in a plan providing for immediate participation, at age 30 an employee who had started on the job at 18 would have to be at least 25-percent vested in 12 years of accrued benefits under these rules (instead of only 5 years of accrued benefits, which would be the case if the plan did not permit participation until the employee was 25).

Service for an employer is to be taken into account for purposes of placement on the vesting schedule, even though the service was in a different division of the corporation, or with a different corporation member of the affiliated group. However, the bill does not require that such service be taken into account for purposes of accruing bene-

[5] A plan which went into effect after this date would not be eligible to use the transitional rule, even if the plan agreement included a retroactive clause which provided that the plan was in effect "as of" December 31, 1973.

fits while the employee works for a division which does not have a plan. This may be illustrated by the following example.

Assume that an employee begins work at age 25 for division A of a corporation, which does not have a pension plan, and, at age 40 he transfers to division B, which does have a plan. Under all of the vesting standards, the employee would immediately become fully vested in the benefits which accrue under the plan, because of his 15 years of prior service with the employer.[6]

Benefits accrued in the past.—Generally, the vesting requirements of the bill are to apply to all accrued benefits, including those which accrued before the effective date of the provision. Years of service prior to the effective date also are to be counted for purposes of determining the extent to which the employee is entitled to vesting. For example, in the case of a plan electing the graded vesting alternative, if an employee joined a company at age 30 (at which time a plan was in effect), became a participant in the plan at age 35, and was age 40 on the effective date of the vesting provisions, he would have to become at least 50-percent vested at that time based on 10 years of service (although this percentage would be reduced under the transition rule for plans in effect on December 1, 1973). However, he might not have more than 5 years of accrued benefits since the minimum benefit accrual is based on participation.[7]

This would occur because of his 5 years of participation under the plan plus his 5 years of preparticipation service. Without this pre-effective date rule, it was apparent to your committee that employees who are now older employees would receive the advantages of required vesting only for the accrued benefits they would be able to build up gradually in the future and would receive no protection for benefits accrued prior to the effective date of these provisions, which would usually be the bulk of the benefits earned during their lifetimes.

Your committee considered various methods of providing that pre-effective date service be taken into account in the case of older employees only, but concluded that most such methods provided some type of undesirable "notch" effect and in most cases would result in little cost saving to the employer relative to the rule adopted in the bill.

However, it does not appear to be desirable to provide for retroactive vesting for employees who have already terminated their service with the employer, since this would create a substantial unexpected cost for the plan (thereby possibly jeopardizing the size of benefits for employees still covered under the plan) and might involve serious recordkeeping problems. Thus, the committee bill specifically provides that the plan is not required to take into account service performed prior to January 1, 1969, until the employee has served at least 5 years with his employer after December 31, 1968.

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[6] Conversely, an employee who worked for 5 years in division B, and then shifted to division A, would continue to increase his percentage of vesting in the benefits which he had accrued under the division B plan, even though division A did not have a plan. Of course he would accrue no benefits in the division B plan on account of his division A service (unless the plan provides otherwise).

[7] The employee need have only 5 years of accrued benefits, because the vesting provisions are to apply to pre-effective date service only to the extent of the employee's accrued benefits. The new participation standards are not to apply before the effective date of those standards: if these facts were to occur in the future, the employee would be at least 50-percent vested in at least 9 years of accrued benefits.

Multiemployer plans.—In the case of a multiemployer plan governed by a collective bargaining agreement, the vesting requirements of the committee bill generally are to be applied as if all employers who are parties to the plan constituted a single employer. For example, years of service with employers A and B under the plan will be counted together in determining vesting, even though the employee now works for employer C (sec. 1014 of the bill).

Service that is seasonal, intermittent, etc.—For purposes of the minimum vesting rules, the question of whether an employee has performed a "year of service" will be determined in accordance with the same regulations which define this term in connection with the participation requirements, described above. Of course, a seasonal or part-time employee who performs a year of service for purposes of determining his place on the vesting schedule, may nonetheless accrue benefits at a slower rate than his full-time, year-round counterpart. However, the relationship between the rate of accrual for a full-time employee, and a part-time or seasonal employee would have to be reasonable and applied on a consistent basis under the plan in order to meet the antidiscrimination requirements. Service with a predecessor of the employer would also be counted, for purposes of the vesting rules, to the extent provided in regulations. Your committee anticipates that the regulations in this area will prevent a situation where an employee might lose his rights to vesting as a result of a business reorganization.

The basic rules have been set forth in terms of "years of service". However, the committee recognizes that there are a substantial number of industries in which the common concepts of years, months, weeks, or hours of service do not apply. For example, it may be appropriate in some industries to provide that a participant must work at least 1,000 hours in order to have completed a "year of service" for purposes of the participation rules and for purposes of determining where he is to be placed on the vesting schedule. Under the bill, the regulations are to take into account such variations of customary working periods.

It must be noted that it is not necessary that the "year of service" concept used for participation or vesting purposes be the same as the "year of service" concept used for purposes of accrual of benefits. For example (as indicated above), in a particular industry it may be appropriate to advance a person one year on the vesting schedule if he has completed 1,000 hours of work during the plan year. However, that same plan may provide that a full year's worth of benefits will accrue only if the employee completes 1,600 hours of service during the plan year. In such a case, completion of 1,200 hours would provide an accrual of .75 of a year's benefits, 1,000 hours would provide accrual of .625 of a year's benefits, 800 hours would provide accrual of .5 of a year's benefits.

Permitted forfeitures of vested rights.—A qualified retirement plan under the committee bill may provide that an employee's vested rights in accrued benefits derived from employer contributions (but not from his own contributions) may be forfeited in the event of the employee's death (although this exception is not to apply if the employee had retired and a "joint and survivor" annuity was to be provided).

Also, a plan is permitted to suspend payment of benefits while the participant is working for the employer (for example, where an early retiree returns to work to increase his subsequent pension benefits). In the case of a multiemployer plan, the benefits may be suspended if the employee has resumed employment in the same industry even though not with the same employer. These rules are not to prevent suspension of part of an early retirement supplement (such as a so-called social security supplement) on account of reemployment, even with another employer or in another industry.

In addition, the bill provides for circumstances under which a retroactive plan amendment, if approved for this purpose by the Secretary of Labor, may be permitted to divest accrued benefits that had already become nonforfeitable. In order to be approved by the Secretary of Labor, such a retroactive amendment which divests what were otherwise nonforfeitable benefits, must have been initiated by the Secretary of Labor or proposed by the plan administrator and the Secretary of Labor must be satisfied that the administrator has given adequate notice to all plan participants and other interested persons. The Secretary of Labor must then give those interested persons an opportunity to be heard and must notify the Secretary of the Treasury of any such hearing. Further, the Secretary of Labor may approve such a divesting retroactive amendment only if he finds that (1) the amendment affects the plan only to such an extent as is necessary or appropriate to carry out the purposes of this pension bill and to provide adequate protection to the participants and beneficiaries, (2) but for the amendment, there would be a substantial risk to the voluntary continuation of the plan or a substantial curtailment of pension benefit levels or the levels of employee compensation, and (3) failure to make the amendment would be adverse to the interests of plan participants in the aggregate. Your committee concluded that, when such conditions occurred and those procedural safeguards were followed, it was appropriate to permit these divestitures.

It is permissible for the employee's vested accrued benefits to be "cashed out" under specified circumstances. On termination of a plan, if the value of the nonforfeitable benefit is less than $1,750, then the benefit may be cashed out by a lump-sum distribution whether or not the employee agrees to receive the distribution (but only if the plan permits such a distribution without regard to the employee's preferences). If the employee agrees to the cashing out of his nonforfeitable benefit then, whether or not the amount is less than $1,750, the benefit may be cashed out if the distribution was made on termination of the employee's participation in the plan or under such other circumstances as may be provided by Treasury regulations. Such a nontermination cashing out of accrued benefit might be permitted, for example, on the occasion of a revision of the formula for computation of accrued benefits under the plan. It must be noted that the rule described above permits the cashing out of vested accrued benefits but the service to which those benefits relate nevertheless must continue to be taken into account, in accordance with the rules described above (service that is seasonal, intermittent, etc.) for purposes of determining whether the employee has met the service requirement for participation and for purposes of determining the employee's place on the vesting schedule

with regard to benefits that accrue in the future. Also in cases where the employee's accrued benefit is not cashed out when the employee leaves the employer's service, if the employee is later reemployed, his percentage of vesting in the benefit which accrued before the service break may be increased on account of service which occurs after the break.

With the limited exceptions noted above, no rights, once they are required to be vested, may be lost by the employee under any circumstances (although, as under present law, the plan may pay the employee the actuarial value of his vested rights upon separation from service). For example, a vested benefit is not to be forfeited because the employee later went to work for a competitor, or in some other way was considered "disloyal" to the employer.[8] Also, rights to benefits are not to be forfeited merely because the employer (or plan administrator) cannot find the employee.

Accrued benefits.—Under the committee bill, the vested employee is protected in his rights to all, or a certain percentage, of his "accrued benefit." It is necessary to provide a statutory definition of an "accrued benefit" because, unless this is a defined amount, vesting of an "accrued benefit" in whatever form is specified by the plan has little, if any, meaning. In the case of any retirement plan other than a defined benefit pension plan, under the bill the employee's "accrued benefit" is the balance in his plan account.[9] This would include, for example, a money purchase pension plan, a profit-sharing plan and a stock-bonus plan.

In the case of a defined benefit plan the bill provides that the accrued benefit is to be determined under the plan, subject to certain requirements. The term "accrued benefit" refers to pension or retirement benefits and is not intended to apply to certain ancillary benefits, such as medical insurance or life insurance, which are sometimes provided for employees in conjunction with a pension plan, and are sometimes provided separately. To require the vesting of these ancillary benefits would seriously complicate the administration and increase the cost of plans whose primary function is to provide retirement income. Also, where the employee moves from one employer to another, the ancillary benefits (which are usually on a contingency basis) would often be provided by the new employer, whereas the new employer normally would not provide pension benefits based on service with the old employer. Also, the accrued benefit to which the vesting rules apply is not to include such items as the value of the right to receive benefits commencing at an age before normal retirement age, so-called social security supplements which are commonly paid in the case of early retirement but then cease when the retiree attains the age at which he becomes entitled to receive current social security benefits, and any value in a plan's joint and survivor annuity provisions to the extent that exceeds the value of what the participant would be entitled to receive under a single life annuity.

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[8] Some plans also provide that an employer may have lien rights against employee interest in a pension plan. These clauses would also be prohibited under the committee bill, except where the plan requires that the employee be given prior notice of any impending lien and there is a judicial hearing on the probable validity of the employer's claim.

[9] Separate accounting for each employee is required under the committee bill in the case of contributions to a defined contribution plan and for voluntary employee contributions to a defined benefit plan.

Generally, an individual's "accrued benefit" under a defined benefit plan is to be expressed in the form of an annual benefit commencing at normal retirement age. Normal retirement age is the age specified in the plan, which may not be later than age 65 (or, if later, the 10th anniversary of the time the participant commenced participation in the plan).

To encourage older employees to remain on the job, many plans provide for a faster rate of benefit accrual in the employee's later years; thus, an employee might accrue a benefit equal to 1.5 percent of compensation for each year of service until age 55, and 2 percent per year thereafter. This technique is known as "back loading".

The committee believes that it is desirable to allow plans to continue to offer a reasonable amount of back loading as an incentive to its older employees. At the same time, it is obviously necessary to put some limits on this device; otherwise a plan which wishes to evade the vesting requirements could provide for de minimis accruals until an employee's last years of employment, at which point very large accruals would be provided. The committee bill takes account of both these factors by providing that the plan may not provide back loaded accruals which are more than one and one-third times the rate of accruals for prior years.

This 133⅓ percent standard may be used only by such plans as continue to accrue benefits during participation indefinitely. Consequently, "front loading" must be kept within the same 133⅓ percent limits, except that a plan is permitted to provide a greater degree of front loading during the employee's first 10 years of service.

For purposes of making the loading calculation, it will be assumed that compensation, social security benefits, cost of living adjustments, investment performance (where relevant), and all other relevant factors used to compute plan benefits will remain constant.

In the case of plans which provide for early retirement, for example, "30 and out" plans, or plans which allow retirement at age 55 after 20 years of service, the employee who meets the conditions for early retirement may receive a much greater benefit in terms of value than the employee who fails to meet the early retirement conditions. For example, if there were a plan which had a normal retirement age of 65, and an early retirement age of 55, with 30 years of service, and an annual benefit accrual of one percent of compensation, subject to a 30 percent of compensation ceiling, an employee who began work at 25, and retired at 55, would receive a benefit of 30 percent of compensation each year thereafter; but, if the employee left his job at age 54, he would receive a benefit of 29 percent a year which was not payable until age 65.

The committee believes it is desirable not to discourage early retirement plans. To place employees who leave before retirement under such plans on exactly the same footing with early retirees would, in some cases, impose such an additional cost burden on the plan that it might be necessary to eliminate the early retirement feature. At the same time, it is unfair to employees who must leave their jobs before retirement to put too large a premium on being able to hold on for the last few years.

Thus, the committee bill provides an alternative accrued benefit standard that may be met in lieu of the 133⅓ percent rule discussed

above. Under this standard, each participant must accrue, for each year of participation (as indicated above, the year of participation used in accruing benefits need not be computed in the same manner as is used for determining "year of service" for purposes of participation and for determining one's status on the vesting schedule), not less than 3 percent of the benefit to which he would be entitled if he participated in the plan for 33 and one-third years and served until age 65 (or any earlier normal retirement age under the plan). Under this approach, too, benefits which cease by age 65 (or the earlier normal retirement) in general need not be taken into account. As in the case of the 133⅓ percent standard, the level of social security benefits and other relevant factors are to be treated as remaining constant. Where compensation is relevant in determining the maximum benefit, the maximum benefit is to be computed as though the employee continued to earn compensation at the same rate that is relevant under the plan. In other words, if the plan provides benefits based on high 3-year average compensation, then that average compensation based on the facts as they exist at the time the accrual is to be made, is to be assumed to continue until age 65 (or earlier normal retirement age). However, in no event is compensation to be taken into account for a period of more than 10 consecutive years.

In order to make clear that rate of accrual rules are not to be manipulated in order to achieve discrimination in favor of employees who are officers, shareholders, or highly compensated, the bill specifies (in the rules for coordination of the vesting standards with the antidiscrimination standards, below) that the Internal Revenue Service is to take account of rates of accruals as well as vesting schedules in determining whether there is prohibited discrimination.

Changes in vesting schedule.—Under the bill, if a plan is amended in a manner which changes its vesting schedule, each person who is a participant in the plan on the date the amendment is adopted (or is a participant in the plan on the amendment's effective date) is to continue to vest his accrued benefits at no less than the rate at which those benefits had been scheduled to be vested under the preamendment vesting schedule. This is to apply both to accrued benefits from preamendment service and to subsequent accrued benefits, and is to apply whether or not the participant had any vested benefits at the time of the amendment. The application of this rule may be illustrated by the following example: Suppose that A is a participant in a plan which follows the minimum requirements of the graded vesting schedule and that A has completed 4 years of service on the amendment date. The amendment provides that the plan is to vest under the minimum requirements of the 10-year 100-percent vesting schedule. Under this rule, at the end of A's next (fifth) year of service, he is to be 25 percent vested in his accrued benefits, as he would have been had the amended vesting schedule not been adopted. This vesting percentage is to be increased by 5 percentage points for each of the next 5 years, as under the minimum requirements of the graded vesting schedule. However, at the end of the tenth year of service, A's vesting percentage becomes 100 percent, because that is the higher rate provided under the new vesting schedule. The same vesting percentages would apply in each of the years if the amendment had been to change the vesting sched-

ule in the opposite manner (i.e., from 10-year 100-percent vesting to graded vesting).

Allocations between employer and employee contributions.—In plans where there are both employer and employee contributions, it will be necessary to allocate the accrued benefit between the portion derived from the employer contributions, and the portion derived from the employee contributions. This allocation may have to be made because the employee is always fully vested with respect to amounts attributable to his own contributions but not necessarily with respect to those of the employer. Also, information of this type would be needed if an employee, upon leaving employment, desires to withdraw his own contributions.

In the case of any plan other than a defined benefit pension plan, the accrued benefit derived from the employee's contributions under the bill is the amount in his own separate account. If employee and employer contributions were not accounted for separately, the employee-contributed portion of the total accrued benefit would be treated as the fraction of the total which is the ratio of employee contributions to total contributions (after taking account of withdrawals).

In the case of a defined benefit pension plan which provides an annual benefit in the form of a single life annuity commencing at normal retirement age (without ancillary benefits), the accrued benefit derived from mandatory employee contributions (which could never be in excess of his total accrued benefit under the plan) would be treated as the total amount of the employee's "accumulated contributions" multiplied by a conversion factor.[10] In general, the conversion factor, which initially is to be fixed at 10 percent for a normal retirement age of 65, is to be used to convert the amount of the accumulated contributions to a single life annuity commencing at normal retirement age. For other normal retirement ages, the conversion factor is to be determined by regulations.

In determining the employee's accumulated contributions, under the bill, interest on the employee's mandatory contributions is to be compounded annually, initially at a rate of 5 percent (beginning with the first plan year subject to the vesting requirements imposed under the committee bill) to the date when the employee would reach normal retirement age. In addition, any interest accumulated on the employee's contributions (either compounded or simple) in accordance with the terms of the plan, prior to the date when the vesting provisions of the bill first apply to that plan, are to be treated as part of the employee's accumulated contributions. For purposes of this rule, an employee's mandatory contributions include any contributions made to the plan by the employee as a condition of employment, or of participation in the plan, or of obtaining benefits under the plan which are attributable to employer contributions.

The bill authorizes the Secretary or his delegate to adjust the conversion factor, and the assumed rate of interest on employee contributions, on a prospective basis, from time to time, as may be appropriate, but requires him to give at least one year's notice of any such action.

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[10] Voluntary employee contributions are to be treated the same as a separate account.

The adjustment in the interest rate would be made by comparing the long-term money rates and investment yields for a 10-year period ending at least 12 months prior to the year in which the adjustment would first apply, with the corresponding rates and yield for the 10-year period from 1964 through 1973.[11]

The committee anticipates that the Treasury, in determining money rates and investment yields, will use a composite of a number of indicators. For example, one possible approach might be to give equal values to the dividend yields of the Dow-Jones Industrial Average and the Standard and Poor's 500-Stock Average, and to the interest rates of Barron's or Moody's highest-rated bonds and United States Treasury long-term obligations. This composite, for the 1964–1973 base period, would be set at 5, and the interest rate in the future would be determined by the Treasury Department's comparison of this composite for the base period, with the same composite for the then most recent 10-year period. It is contemplated that this interest rate will be adjusted less often than annually, and that due regard will be given by the Treasury Department to the impact of any such adjustment on existing plans.

Discrimination.—Under present law, rapid vesting requirements are sometimes imposed on a plan in order to prevent discrimination. Your committee anticipates that the higher vesting standards provided in the bill will reduce the need to require faster vesting in order to achieve this purpose. On the other hand, there undoubtedly still will be cases where it will be necessary to require that the plan provide vesting over and above that required under the bill to prevent discrimination under a plan in favor of officers, shareholders, and highly compensated employees. Under the committee bill, the Internal Revenue Service is to require more rapid vesting (such as by requiring a greater portion of the accrued benefit to become vested or by requiring the benefit to accrue faster in order to minimize the possible discriminatory effects of "back loading") if it appears that there had been, or is likely to be, forfeitures under the plan which have the effect of discriminating in favor of the officers, etc. For example, in a profit-sharing plan, such forfeitures could directly benefit the proscribed class of individuals. But in a defined benefit plan there could also be discrimination by reducing the cost to the employer of providing a disproportionate amount of benefits for executives. In other words, if most highly paid employees remain (or are likely to remain) on the job, while other employees tend to leave, the Internal Revenue Service could find a pattern of discrimination (whether or not it was the result of a deliberate policy of dismissing employees in order to prevent vesting) and could require more rapid vesting (for example, by adjusting the vesting schedule, the accrual rate, or both).

Also, present law is designed to ensure that in the event of early plan termination, the benefits under the plan are not paid to employees who are officers, shareholders, or highly compensated employees in a discriminatory manner. The committee bill contains a provision to

[11] To forestall the need for plan amendments, the committee anticipates that a plan could satisfy the requirements of these provisions if it provided that interest on mandatory employee contributions would be computed at a rate of 5-percent, or at such other rate as may be required from time to time under the Internal Revenue Code of 1954, and the regulations issued thereunder.

make it clear that the vesting requirements under the bill are not intended to operate to overturn these rules. Thus, for example, in the event of an early plan termination, a highly compensated employee might receive less than his otherwise vested benefit under the bill, if this were necessary to prevent discrimination.

Plan termination.—Under present law, all accrued benefits in a qualified pension plan must become fully vested (to the extent then funded) in the event of a termination, or the complete discontinuance of contributions under a pension plan. This rule will no longer be necessary with respect to discontinued contributions, because the committee bill (sec. 1013) now provides for an excise tax on underfunding. Employers whose plans are subject to the funding requirements of the committee bill cannot terminate their plans merely by discontinuing contributions, since the employers continue to remain liable for the required contribution.[12] However, the committee bill makes clear that this rule of full immediate vesting is still to apply in the case of a termination, or a partial termination. (Examples of a partial termination might include, under certain circumstances, a large reduction in the work force, or a sizable reduction in benefits under the plan.) Moreover, even after the plan has terminated, the employer is still under an obligation to pay the required funding of the plan through the date of termination and these make-up amounts (if any) are to be taken into account in determining the accrued liabilities which may become vested upon termination.[13]

Class year plans.—A class year plan is a profit-sharing or stock bonus plan which provides for the separate vesting of employee rights to contributions (or rights derived from contributions) to a plan on a year-by-year basis and the withdrawal of these amounts on a class-by-class basis as they mature. The minimum vesting requirements of the bill applicable to a class year plan are satisfied under the bill if the plan provides for 100-percent vesting of the benefits derived from employer contributions within 5 years after the end of the plan year for which the contributions were made. A separate rule is needed for class year plans since they are structured differently than most other types of plans. The 5-year full vesting rule provided in this case by the committee bill assures an employee who terminates his employment under a class year plan that he will not forfeit his rights to more than 4 years of employer contributions.

Recordkeeping requirements.—To carry out the intent of the vesting provisions (primarily those involving intermittent employment), the employer would be required to keep records of the years of service of his employees and the percentage of vesting which the employees had earned, together with any additional information required by the Secretary or his delegate in order to determine the employee's benefits. In the case of a multiemployer plan, the employer would furnish the required information to the plan administrator (who would be required to maintain the records), in accordance with regulations.

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[12] Plans which are not subject to the funding requirements (e.g., profit-sharing plans, church plans, and government plans) can be required to provide vesing of employee benefits (to the extent funded) if contribuions are completely discontinued.

[13] In the case of a multiemployer plan the Secretary or his delegate may provide by regulations for the situation where all the employers of the terminated plan did not contribute at the same rate or on the same basis.

Failure to maintain or furnish the required records would result in a civil penalty of $10 for each employee with respect to whom the failure occurs, unless it is shown that the failure is due to reasonable cause. The committee expects that the necessary records will be retained by employers for at least 10 years following a break in service. After that, the employee could still establish his right to vesting based on prior service, but the burden of producing the evidence would shift to the employee.

In addition, the Social Security Administration is to be informed, in a time and manner to be prescribed under regulations, when an employee terminates his service prior to retirement with vested benefits.[14] This information, in turn, will be supplied to plan participants and beneficiaries upon request, and when the individual applies for social security benefits. This provision should minimize the danger that vested rights may be lost because a participant is unaware that he is entitled to receive a pension. (Regulations will provide for the situations where adequate records are not available for periods before the effective date of bill.)

Under the bill, the "plan administrator" would generally be the person so designated under the plan or, if there were no designation, the employer or organization who maintained the plan.

Variations.—In the case of a multiemployer plan, the bill (in sec. 1015) permits the Secretary of Labor to prescribe an alternate method (often referred to as a "variance") of satisfying the vesting schedules and accrued benefit requirements with respect to benefits attributable to employer contributions, if it is established to his satisfaction that rigid application of the requirements of the bill would increase the costs of the plan to such an extent that there was a substantial risk that the plan would be terminated, or there would be a substantial reduction in the benefits under the plan, or in the compensation of the employees. Such a variance could also be granted to prevent an undue administrative burden in connection with the plan.

The rules for such variances (which may be considered by the Secretary of Labor either on his own motion or on petition by the plan administrator, and only with appropriate notice and hearing safeguards) are described in detail below (in the funding portion of this general explanation).

Joint and survivor annuities.—Under present law, there is no requirement that a qualified employee plan must provide for survivor annuities. This can result in a hardship where an individual primarily dependent on his pension as a source of retirement income is unable to make adequate provision for his spouse's retirement years should he predecease her. To correct this situation, the committee's bill requires that if a plan provides for a lifetime annuity then, where the participant is married on the annuity starting date, the plan must provide for a joint and survivor annuity (or an arrangement, such as

[14] In the case of a multiemployer plan, the information would generally be furnished only when the employee left the plan; there would be no need to notify the Social Security Administration merely because the participant changed employers. Also, because of the large "turnover" rate in multiemployer plans, your committee contemplates that the regulations will provide that in the case of a multiemployer plan, no reporting is required for a reasonable period of, say, 2 years after the employee has last performed service under the plan.

supplementary benefits for the participant's spouse which has essentially the same effect) where the survivor annuity is at least half of the annuity payable to the participant during the joint lives of the participant and his spouse.

The plan may provide that the participant has a reasonable period (as prescribed in regulations) before the annuity starting date during which he may elect in writing—after having received a written explanation of the terms and conditions of the joint and survivor annuity and the effect of such an election—not to take the joint and survivor annuity. The bill does not require the plan to "subsidize" the joint and survivor annuity. Consequently, such a joint and survivor annuity could be less (in terms of dollars per annuity payment) than the single life annuity. Also, the bill does not forbid plans from making reasonable actuarial adjustments to take appropriate account of the possibility that otherwise total costs would be increased because of adverse selection.

The joint and survivor annuity requirements are to apply only to plans to which the new vesting requirements of this bill are applicable. In other words, the joint and survivor rules would not apply to government plans, they would not apply to church plans unless an election had been made to come under the new rules, and the effective date in the case of existing plans would be delayed to the same extent that the effective date is delayed generally with regard to the new vesting provisions. Of course, the plans not subject to these provisions (or to which the new provisions would not apply for some years into the future) may offer joint and survivor options if they wish to do so. The mandatory provisions of the bill will not apply unless that participant's annuity starting date is on or after the effective date with regard to that plan and would not apply unless that participant was an active participant in the plan on or after that effective date.

Plan mergers.—The committee bill contains a provision (sec. 1021) to ensure that the rights of participants are fully protected in the event of plan mergers. Under this provision, which applies to any plan merger occurring after October 22, 1973, each participant must be entitled to receive a benefit immediately after the merger (determined as if the plan then terminated) which has not less than the value of the benefit he would have been entitled to receive immediately before the merger (determined as if the plan then terminated. Moreover, the funding of his accrued benefit must be at least as adequate after the merger as it was before the merger. Without such a provision, the committee was concerned that the rights of plan participants might be diluted in some instances, as the result of plan mergers. As a further safeguard, the bill requires that in the case of any plan merger which occurs after enactment, the plan administrator must give 30 days notice to the Internal Revenue Service, including an actuarial statement indicating that the requirements of the bill have been met.

Alienation.—To further ensure that the employee's accured benefits are actually available for retirement purposes, the committee bill also contains a provision requiring the plan to provide that benefits may not be assigned or alienated. (Of course, this provision is not intended to prevent the transfer of benefit rights from one qualified plan to another.)

Nevertheless, a plan will be permitted to provide for voluntary and revocable assignments (not to exceed 10 percent of any benefit payment) for the purpose of paying premiums on life insurance, on medical or hospital insurance, or for any noncommercial and nonprofit purposes specified under Treasury regulations. Your committee understands that many plans provide for payments of premiums for supplemental hospital benefits (under the Social Security Act) and this provision is intended to specifically permit such an alienation. Your committee dealt specifically with life, medical, and hospital insurance premiums because such premiums are in many cases already paid by plans out of pension benefits for the convenience of the plan retirees. Your committee determined to permit reasonable flexibility to extend this practice to other types of payments in the future, concluding that the safeguards (revocability, 10-percent limit, and Treasury regulations) would be sufficient to prevent abuses which might endanger the right of future retirees to be secure in their retirement incomes.

This provision is not intended to interfere with the current practice in many plans of using vested benefits as collateral for reasonable loans from the plans, where the "prohibited transactions" provisions of present law (sec. 503 of the Code) and other fiduciary requirements are not violated.

Benefits of terminated participants.—Protection is given to retired individuals and individuals who are separated from the service of the employer against reductions in private plan benefits when social security benefit levels increase. In general, under present integration procedures, social security benefits attributable to employer contributions are treated as though they were part of the private plan. As a result when the level of social security benefits increases, some integrated plans have reduced the amount of the retirement benefits that they provide for covered employees.

Present law under administrative practice provides that qualified plans may not use increases in social security benefit levels to reduce the benefits that they pay where the employees concerned are retired and already receiving integrated plan benefits. The bill codifies this treatment for retired persons. It also extends the prohibition against reducing plan benefits where social security benefit levels are increased to cases where the individuals concerned are separated from service prior to retirement and have deferred nonforfeitable rights to plan benefits. This provision is effective for increases in social security benefits which take place after the date of enactment or on the date of the first receipt of plan benefits or the date of separation from service (whichever is applicable) if that date is later.

These changes do not affect the ability of plans to use the integration procedures to reduce the benefits that they pay to individuals who are currently covered when social security benefits are liberalized. Your committee, however, believes that such practices raise important issues. On the one hand, the objective of the Congress in increasing social security benefits might be considered to be frustrated to the extent that individuals with low and moderate incomes have their private retirement benefits reduced as a result of the integration procedures. On the other hand, your committee is very much aware that many present plans are fully or partly integrated and that elimination

of the integration procedures could substantially increase the cost of financing private plans. Employees, as a whole, might be injured rather than aided if such cost increases resulted in slowing down the growth or perhaps even eliminated private retirement plans.

In view of the serious issues involved in the integration of private plans with the social security system, your committee believes that it is desirable to postpone action on this issue pending further study of this problem. More specifically, your committee plans to consider this overall problem again at the earliest opportunity, possibly in connection with future tax reform or social security legislation. However, your committee believes that no further integration of social security and pension benefits should be allowed under any further regulations issued by the Secretary or his delegate at least until June 30, 1975.

Payment of benefits.—To ensure that a participant can reasonably expect to receive his benefits during his retirement years, the committee bill requires a qualified plan (to which the basic vesting provisions apply) to commence payment of benefits to the participant (unless he elects otherwise in writing and this election is permitted by the incidental death benefits rule) not later than the 60th day after the close of the plan year in which the latest of these events occurs: (1) the participant attains age 65; (2) the 10th anniversary of the time the participant commenced participation in the plan; or (3) the participant terminates his service with the employer. This requirement is set in terms of the end of a plan year, rather than the date on which the event occurs, in order not to disrupt unduly the administrative practice of plans that begin retirement benefits for all new retirees on the same date. The second of the above alternatives (the 10th anniversary of commencement of service) is designed to permit a defined benefit plan to have an adequate period of time in which to fund the benefit for a person who first enters the plan at a relatively late age. The third of the above alternatives (termination of service) has been added in recognition of the fact that these benefits are designed primarily to provide for the participant's retirement.

Effect of withdrawal of employee contributions.—At the present time, many employee plans require employees to make contributions in order to receive employer contributions (or benefits to be funded by the employer). Some such plans permit employees to withdraw their contributions (or the benefits derived from their contributions) but impose as a "penalty" for such withdrawal the forfeiture of some or all of the benefits derived from employer contributions. Where this occurs, the effect is to reduce the retirement protection afforded to the employee. Your committee is not at this point expressing a view as to whether employee contributions or the right to withdraw those contributions are desirable features of retirement plans. However, it does not appear appropriate to provide for forfeitures derived from employer contributions merely because of a withdrawal by the employee. Accordingly, the committee bill specifically requires all qualified plans to forbid forfeitures of nonforfeitable benefits derived from employer contributions solely because of withdrawals by employees of any parts of the benefits derived from the employees' contributions.

This limitation is to apply only to plans to which the new vesting provisions of the bill apply.

Comparability of plans having different vesting provisions under the antidiscrimination rules.—There are certain classes of employees, such as engineers, whose rate of job mobility is so high, that many of them would not receive protection even under the vesting provisions provided under the bill. To be effectively covered under a pension plan, these employees would have to receive a very substantial amount of vesting during their first 5 years of employment. At the same time, if all employees were to be provided with vesting on this rapid a basis under the plan, the cost might be so high that the employer would terminate the plan, or drastically reduce the benefits under the plan. To meet this situation, the committee bill contains a provision which would allow the engineers and other employees with a similar problem, in effect, to trade off some of their benefits in exchange for earlier vesting.

Under present law a single plan may satisfy the antidiscrimination requirements (sec. 401(a)(4)), if either the contributions or the benefits do not discriminate in favor of certain enumerated employees. Generally, profit-sharing plans, stock bonus plans, and money purchase plans can satisfy this requirement if the contributions are nondiscriminatory even though the benefits may discriminate. Defined benefit plans can satisfy this requirement if benefits are nondiscriminatory even though the contributions are discriminatory. A target benefit plan, a type of money purchase plan, may satisfy the requirement if the anticipated benefits do not discriminate even though the contributions do. (For this purpose actual investment experience is not considered.) Also under existing law, two plans can be considered as one for purposes of satisfying the antidiscrimination requirements, either as to contributions or benefits.

Under the committee bill an employer might set up two retirement plans, one with very rapid vesting, the other with slower vesting, but with higher benefits. The bill provides that for the purposes of applying the antidiscrimination rules, the two plans could be considered as a unit (as under present law) and the plan with more rapid vesting would not be considered discriminatory merely because of this feature (even if highly compensated employees were covered under the plan), if contributions were comparable or (in the case of defined benefit plans) if benefits under this plan were scaled down appropriately in relation to benefits provided under the plan with less rapid vesting. (Of course, each plan would have to at least meet the minimum vesting schedule provided in the committee bill and would also have to be nondiscriminatory as to the employees covered by it.)

Thus, in the case of a defined contribution plan, the tax deductible contributions to both plans would be required to be the same in proportion to covered compensation. This would mean, in effect, that employees in the plan with less rapid vesting would receive increased benefits as the result of forfeitures,[15] whereas there would be relatively few forfeitures under the plan with earlier vesting.

In the case of a defined benefit plan, the same principle of comparability would apply, but here the level of benefits under the plan with

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[15] If the employer reduced his tax deductible contributions under the plan because of forfeitures, the tax deductible contributions to the plan with early vesting would also have to be reduced; comparatively, the employees in the plan with less rapid vesting would always have to accumulate larger benefits in proportion to cmpensation.

earlier vesting would have to be lower, in relation to the benefits provided under the other plan. Generally, these comparisons would be made on an actuarial basis, in accordance with regulations.

By this provision the committee is clarifying this matter for the future. It intends that prior law on this point be determined as if this provision had not been enacted.

Protection of pension rights under government contracts.—Many employees, such as engineers, who are employed in industries engaged to a substantial extent in the performance of Federal contracts, have an unusually high rate of mobility which results to a considerable extent from terminations or modifications of Federal contracts, grants, or procurement policies. As a result of this unusual mobility, these employees are particularly susceptible to the loss of their pension rights due to changes in their employment status before they can become vested.

To meet this situation, the bill directs the Secretary of Labor to undertake a study, in consultation with professional societies, business and labor organizations, and other Federal agencies, of steps to be taken to ensure that professional, scientific, technical, and other personnel employed under Federal contracts are protected against loss of their pensions resulting from job transfers or loss of employment. The Secretary of Labor is to report to Congress on this subject within 2 years after the date of enactment and shall, if feasible, develop recommendations for Federal procurement regulations to safeguard pension rights in this situation within one year after filing his report. These regulations are to become effective unless either House of Congress adopts a resolution of disapproval within 90 days after the proposed regulations are submitted to the Congress by the Secretary of Labor. Of course, individual government agencies would be free to take action to protect the rights of workers employed under agency contracts, even if no comprehensive regulations, applicable on a government-wide basis, could be developed.

Church and government plans, and union-sponsored plans.—Church and government plans (described above under participation and coverage) are exempt from the vesting provisions of the bill but must comply with the requirements of present law in this area (as in effect on the day before enactment) in order to be qualified. Church plans may elect to come under the provisions of the bill and, once made, such an election will be irrevocable.

The committee bill also exempts from the vesting requirements plans which do not, at any time after enactment, provide for employer contributions—in other words, union-sponsored plans. Since these plans are, in effect, controlled by the employees for whose benefit they are established, there is no need to impose the vesting requirements of the bill. However, if the plan provides for employer contributions, the mere fact that no such contributions are made (either because the plan is fully funded, or because the employer fails to comply with the funding requirements of the bill, or for some other reason), will not result in an exemption for the plan from the vesting requirement.

Effective dates

These provisions apply generally to plan years beginning after the date of enactment of the bill. Later effective dates (which may vary from 1976 to 1981, depending on the circumstances of the plan) are

provided in the case of plans in existence on January 1, 1974, in order to afford such plans adequate opportunity to adopt any amendments needed in order to conform to the new requirements resulting from this bill. The effective date provisions are described more fully above, in the discussion of participation and coverage requirements.

Revenue effect

Estimates of the revenue effect of the minimum vesting provisions vary with the assumption made about the relationship between additional employer contributions to pension plans and cash wages. If it is assumed that the additional employer contributions will be a substitute for cash wages, the estimated revenue loss is $130 million. On the other hand, if it is assumed that the additional employer contributions will be an addition to cash wages, the estimated revenue loss $265 million. The estimates under both cases assume that benefits under pension plans are not decreased and that no benefit increases are foregone as a result of the bill. The estimates are based on 1973 levels of income and employment.

C. Funding

(Secs. 1013, 1033 of the bill and secs. 404, 412, 4971, 6059, 6692, 7517 of the Code)

Present law

Under present tax law, contributions to a qualified pension plan generally must be sufficient to pay the liabilities created currently (*i.e.*, the normal pension costs) plus the interest due on unfunded accrued pension liabilities (past service costs) (regs. § 1.401–6(c)(2)(ii)).[1] This tends to keep the amount of unfunded pension liabilities from growing larger, but does not require any contributions to be made to amortize the principal amount of the unfunded liabilities.

Pension plan liabilities [2] generally are estimates and are based on actuarial calculations. Consequently, all actuarial methods, factors, and assumptions used must, taken together, be reasonable and appropriate in the individual employer's situation (Regs. § 1.404(a)–3(b)). When applying for a determination letter from the Internal Revenue Service that a plan is qualified, the actuarial methods, factors, and assumptions used generally must be reported to the Service, along with other information to permit verification of the reasonableness of the actuarial methods used. Changes in actuarial assumptions and methods must be reported annually to the Service.

Actual experience may turn out to be different from anticipated experience, changing the estimated pension liabilities (and needed contributions) and resulting in experience loss or experience gain. Depending on the circumstances, the contributions needed to make up experience losses may be deducted currently or may be added to past service costs and deducted only on an amortized basis.[3] Similarly, de-

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[1] This requirement applies only to pension and not to profit-sharing or stock bonus plans.

[2] In determining liabilities, an employer must take into account factors such as the basis on which benefits are computed, expected mortality, interest, employee turnover, and changes in compensation levels.

[3] Under the "10-percent" deduction limit (sec. 404(a)(1)(C) of the Code), if the experience loss occurs using the same assumptions as previously, the additional contributions, subject to certain restrictions, may be deducted currently. If the deficit results from a loss in asset values or revaluation of liabilities using more conservative assumptions the deficit may be added to past service cost. Rev. Bull. 57–550, 1957–2 C.B. 266.

pending on the circumstances, experience gains may reduce the plan cost currently or reduce costs under one of the spreading methods used to determine the amounts deductible.[4]

The value of plan assets also affects the amount of contributions. Under administrative rulings, assets may be valued by using any valuation basis if it is consistently followed and results in costs that are reasonable.

If an employer does not make the minimum required contributions to a qualified plan, under administrative practice the deficiency may be added to unfunded past service costs. However, the plan also may be considered terminated, and immediate vesting of the employees' rights, to the extent funded, may be required.

General reasons for change

Significant tax benefits are allowed under the Internal Revenue Code for plans that provide for employee retirement. Implicit in these tax benefits is the requirement that tax qualified plans will in fact provide the retirement benefits promised. However, the available evidence has demonstrated that a significant portion of existing tax qualified pension plans have not been adequately funded and are not accumulating sufficient assets to pay benefits in the future to cover employees. As a result, many employees now covered by tax qualified pension plans may not actually receive the pensions they have been promised, because the needed funds will not be available. Your committee believes that the present minimum funding requirement for plans qualified under the Internal Revenue Code is not adequate to prevent this underfunding, since it does not require any payment to reduce the amount of the outstanding unfunded liabilities, which may be substantial. As a result, your committee's bill provides new minimum funding standards.

Under the bill, normal costs of covered plans are to be currently funded. Additionally, newly-established unfunded past service liabilities of covered plans generally are to be amortized over no more than 30 years, although existing past service liabilities generally are to be amortized over no more than 40 years. In addition, experience deficiencies generally are to be amortized over no more than 15 years. (Generally, longer periods are to be allowed for multiemployer plans.) Alternatively, if funding requirements are higher under a second general standard which is based on accrued vested liabilities, this standard is to apply in lieu of the rules set forth above. Under this standard, accrued vested liabilities are determined, as also are the value of the plan's assets. To the extent the vested liabilities exceed the value of assets, the first year's payment under a 20 year amortization schedule (principal and interest) of unfunded vested liabilities is to be paid in the current year. A new determination with respect to the applicability of this second general standard is to be made in each of the succeeding years, starting with a new 20 year period. Of course, pension liabilities may be amortized at a faster rate than under the minimum required standard, if desired.

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[4] See Rev. Rul. 59-153, 1959-1 C.B. 89, discussing a pension plan using the "entry age normal method," where adjustment for gains is generally made by deducting the amount of gains arising in any year from the next year's deductible limit under sec. 404(a)(1)(C). See also Rev. Rul. 65-310, 1965-2, C.B. 145, discussing a plan using the "frozen initial liability method," where adjustments for gains are spread automatically as a part of current and future normal costs.

Your committee recognizes that the amount required to fund a pension plan is in large part determined by actuaries' estimates of future plan costs, which in turn are based on the actuarial methods and assumptions used for each plan. Consequently, the determination of the amount of contributions that must be made to a plan to adequately fund the plan benefits is significantly affected by the professional decisions of the plan's actuary. Since there is no existing government regulation or licensing requirement for actuaries as there is for, *e.g.*, lawyers and accountants, your committee believes that minimum standards of competence should be established for persons who make actuarial computations for qualified plans. Consequently, the bill requires the Secretary of the Treasury (in regulations that are also to be approved by the Secretary of Labor) to set standards of competence for persons who make actuarial reports to the Internal Revenue Service. The bill also provides that actuaries enrolled to practice before the Service are to certify plan costs and report the actuarial methods and assumptions used for each pension plan. Your committee also contemplates that the Secretary will establish an actuarial advisory board to provide assistance in setting standards for enrolling actuaries, setting guidelines for actuarial assumptions and in other pertinent matters.

Additionally, your committee believes that the current sanctions on an employer for failure to adequately fund his qualified plan are inappropriate, since they may not affect an employer's decision to underfund his plan. For example, an employer may not feel any reason to make the minimum required contributions to his plan if the only consequence of underfunding is to give his employees vested rights in the amounts that are already funded. To resolve this problem, the bill provides an excise tax on the failure to meet the minimum funding requirements.

Your committee also recognizes that, within limits, employers who are financially unable to meet the funding requirements should be allowed to postpone paying contributions to their plans. Therefore, the bill allows the Internal Revenue Service to grant variances from certain minimum funding requirements if the employer demonstrates that substantial business hardship would otherwise result and that applying the minimum standard would be adverse to the interests of plan participants in the aggregate. The amount for which the variance is granted is to be amortized over no more than 15 years. The bill also provides that the Secretary of Labor may allow variances that would provide longer amortization periods for funding multiemployer plans if substantial business hardship would otherwise result. Additionally, in certain cases, the Secretary of Labor is to be able to prescribe alternative funding methods for multiemployer plans.

Explanation of provisions

Minimum funding rules, in general.—Your committee's bill establishes new minimum funding requirements for qualified plans so these plans will accumulate sufficient assets within a reasonable time to pay benefits to covered employees when they retire. Of course, contributions generally may be greater than these minimum requirements if the employer so desires (however, see discussion below under *Maximum deductions for plan contributions*). The new funding rules generally are to apply to any plan that, after the effective date of the

funding provisions for the plan in question, has qualified (or has been determined by the Internal Revenue Service to qualify) under section 401(a), 404(a)(2), (employees' annuities plans), or 405(a) (bond purchase plans) of the Code. However, the new requirements generally are not to apply to profit-sharing or stock bonus plans, governmental plans, certain church plans, plans with no employer contributions, and certain insured plans. Once a plan or trust has been tax qualified, the minimum funding requirements will apply, and they are to continue to apply to the plan or trust, even if it later loses its qualified status. If a plan loses its qualified status, the deduction rules for nonqualified plans are to apply even though the minimum funding standard continues to apply to the plan.

Generally, under the new funding requirements the minimum amount that an employer is to contribute annually to a defined benefit pension plan includes the normal costs of the plan (as under current law), plus amortization of past service liabilities, experience losses, etc. The minimum amortization payments required by the bill are calculated on a level payment basis—including interest and principal—over stated periods of time. Generally, initial past service liabilities and past service liabilities arising under plan amendments are to be amortized over no more than 30 years (40 years for the unfunded past service liabilities on the effective date of these new funding rules, in the case of existing plans), and experience losses are to be amortized over no more than 15 years. However, generally experience gains and losses need not be calculated more often than every three years. With respect to multiemployer plans, past service liabilities generally may be amortized over no more than 40 years, and experience losses over no more than 20 years. However, an alternative funding standard, based on contributing a portion of the unfunded nonforfeitable liabilities under the plan, is to be used if it brings a higher level of funding in any year than would the basic minimum funding standard. This alternative standard is to apply both to multiemployer and other plans.

If an employer would otherwise incur substantial business hardship, and if application of the minimum funding requirements would be adverse to plan participants in the aggregate, the Internal Revenue Service may waive the requirement of current payment of part or all of a year's contributions of normal costs, and amounts needed to amortize past service liabilities and experience losses; the amount waived (plus interest) is to be amortized not less rapidly than ratably (including interest) over 15 years, and no more than 5 waivers may be granted for any 15 consecutive years. (As described subsequently other variances may be allowed by the Secretary of Labor for multiemployer plans.)

For money purchase pension plans, the minimum amount that an employer is to annually contribute to the plan is the amount that must be contributed for the year under the plan formula. For purposes of this rule, a plan (for example, a so-called Taft-Hartley plan) which provides an agreed level of benefits and a specified level of contributions during the contract period is not to be considered a money purchase plan if the employer or his representative participated in the determination of the benefits. On the other hand, a "target benefit

plan" is to be treated as a money purchase plan for purposes of the minimum funding rules.

Under the new funding rules, generally each covered plan is to maintain a new account called a "funding standard account." This account is to aid both the taxpayer and Internal Revenue Service in administering the minimum funding rules. The account also is used to assure that a taxpayer who has funded more than the minimum amount required is properly credited for that excess and for the interest earned on the excess. Similarly, where a taxpayer has paid too little, the account is to assist in enforcing the minimum funding standard, and to assure that the taxpayer is charged with interest on the amount of underfunding.

Each year the funding standard account is to be charged with the liabilities which must be paid to meet the minimum funding standard. Also, each year the funding standard account is to be credited with contributions under the plan and with any other decrease in liabilities (such as amortized experience gains). If the plan meets the minimum funding requirements at the end of each year, the funding standard account will show a zero balance (or a positive balance, if the employer has contributed more than the minimum required). If the minimum contributions have not been made, the funding standard account will show a deficiency (called an "accumulated funding deficiency").

The funding rules established by the bill are in addition to the rules which provide the maximum deduction limits for contributions to a plan. However, generally a contribution that is required by the minimum funding rules is to be deductible currently. In addition, the rules governing the maximum deduction limitations are to be changed to make them more compatible with the minimum funding requirements.

Normal costs and initial past service liabilities.—Your committee's bill specifically continues the requirement of present law that the normal costs (arising from current liabilities) of a defined benefit pension plan must be currently funded. In addition, in order to give assurance that a plan will have sufficient assets to pay benefits, the bill establishes new minimum requirements for funding accrued past service liabilities. In general, the bill requires that an employer's contributions to a defined benefit pension plan for initial past service liabilities is to be sufficient to amortize these liabilities, on an accrued basis, over no more than 30 years from the date that the plan is established (40 years for multiemployer plans).

For a plan in existence on the date of enactment, unfunded past service liabilities existing as of the effective date of the new funding provisions applicable to the plan are to be treated as initial past service cost to come under the minimum funding rule and are to be amortized over no more than 40 years. This longer period will allow existing plans sufficient time to make the transition into the new funding rules. Since existing plans may have to be amended to meet the new vesting and participation requirements of the bill (and these amendments would affect plan costs), the 40-year amortization period is to be allowed for past service liabilities existing as of the plan year for which the bill becomes effective, including those liabilities arising from amendments made to meet the new vesting and participation require-

ments, even if those amendments are made retroactively after the effective date respecting the plan. However, the 40-year amortization is allowed only with respect to liabilities arising from retroactive amendments that are made by the time the employer must file his tax return for his taxable year in or with which the first plan year to which the new minimum funding requirements apply ends. In the cast of multiemployer plans, such retroactive amendments may be made within two years after the close of the first plan year to which the new minimum funding requirements apply.

The minimum funding requirement for past service liabilities in effect is analogous to payment over 30 years of a loan secured by a home mortgage. It requires contributions to the plan to be made not less rapidly than if made on a level payment basis over 30 years, with each payment including both interest and principal. For example, if the past service liability is $1,000,000 at the time a plan is established, the minimum level payment that is to be made each year, for 30 years, to meet the funding requirement (calculated at an interest rate of 6 percent per annum over the 30-year period) is $68,537 per year (assuming contributions are made at the beginning of each year). In addition, the employer would be required to contribute annually to the plan an amount equal to the normal cost of the plan.

The interest rate to be used in calculating the minimum payments for amortization of initial past service liabilities is the same rate as that used in determining plan cost, at the time the plan is establised, or at the time the new funding requirements apply to the plan, in the case of plans in existence on the date of enactment. (Similarly, the interest rate used to amortize past service liabilities arising from amendments, to amortize experience losses, and to amortize contribution waivers also is the rate used to determine plan costs at the time the liability in question first arose.) If the interest rate used to determine plan costs is changed as of a later date in order to conform with experience, the initial amortization schedule of level payments is not to be changed, but the consequent increase (or decrease) in plan costs is to be amortized as an experience loss or gain (treated in the manner described below).

Under your committee's bill, the basic minimum funding rules—both those which apply to all past service liabilities and those which apply to normal costs—require funding on the basis of accrued, (that is, both vested and nonvested) liabilities, not merely on the basis of vested liabilities. The use of accrued liabilities for this purpose appears appropriate because it generally provides the most orderly and comprehensive method for funding the plan's entire liabilities. In this way, gradual payments will be made to fund all of a plan's present liabilities, including the presently nonvested accrued liabilities which are expected to vest in the future. Moreover, funding on the basis of accrued liabilities tends to produce somewhat more rapid funding, and as a result generally provides more protection to plan participants.

Generally, the 30-year amortization requirements initially add only moderately to an employer's funding cost under present law. This is true because under present law interest on unfunded accrued past service liabilities (which accounts for the bulk of the level amortization payments required under the bill in the early years) must be con-

tributed to a qualified pension plan. Therefore, your committee believes that 30-year amortization will not hamper an employer in starting a new plan, or in adding plan amendments, that includes past service liabilities. Similarly, the 40-year amortization will not unduly increase present costs of an employer with an existing plan.

Plan amendments.—The bill provides that past service liabilities created by plan amendments are to be treated generally in the same way as initial past service liabilities of new plans for purposes of the minimum funding rules. Under the minimum funding rules these liabilities are to be amortized separately over a 30-year period (40 years for multiemployer plans) from the date the amendment is adopted even if this precedes the date on which benefits increase. For example, if the unfunded accrued past service liability added by an amendment is $100,000, the employer generally is to amortize this increase in past service liability in 30 annual payments of $6,854 (assuming an interest rate of 6 percent and that contributions are made at the beginning of each plan year).

Plan amendments which decrease past service liabilities (by decreasing plan benefits) are treated consistently with plan amendments increasing benefits; that is, decreases in past service liabilities from plan amendments are to be amortized over 30 years (40 years for multiemployer plans). Consequently, the minimum amortized annual payments to fund past service liabilities that must be contributed by an employer who decreases plan benefits generally will not be less, in any one year, than amortized payments required for an employer who started out with a plan providing the same (lower) benefits. (Of course, a decrease in benefits will often also decrease the normal cost which must be funded annually.)

Under the bill plan amendments may be made on a retroactive basis, to a limited extent, without the approval of the Secretary of Labor. In this case, plan amendments may be made after the close of a plan year and yet apply to that year if they are made within the time for filing the employer's return (including extensions) for the employer's taxable year with or within which that plan year ends. (Since a single employer's plan year is not a workable standard for multiemployer plans, with respect to multiemployer plans, an amendment may be made within two years after the close of the plan year.) It is expected that this provision may be used to decrease plan liabilities where an error has been made in calculating the amount of benefits that can be provided and funded under the minimum standard. However, amendments made under this provision are not to decrease accrued benefits of any participant determined as of the end of the first plan year to which the amendment applies.

This provision also may be used with respect to increases in plan liabilities. As discussed above, to the extent that past service liabilities are added by plan amendments that are effective as of the effective date of the new funding requirements for existing plans, and are made within the time allowed for retroactive amendment, these past service liabilities may be amortized over a 40-year period.

Your committee also recognizes that in certain cases where plan participants would otherwise suffer substantial adverse consequences, it may be appropriate for plan benefits to be retroactively reduced beyond

the limit described above. Therefore, the bill provides that, on application of the plan administrator (or on motion of the Secretary of Labor) and after proper notice to all interested parties and a public hearing where interested parties are provided adequate opportunity to be heard, the Secretary of Labor may approve a retroactive decrease in plan benefits (whether or not nonforfeitable). However, before such approval is granted, the Secretary of Labor must make findings of fact that if the amendment is not approved, there would be a substantial risk that the plan would not be continued, a substantial risk of a curtailment of benefits (more than the curtailment that would occur with approval of the amendment), or a substantial risk that current levels of employee compensation would be substantially curtailed. Furthermore, the Secretary of Labor must find that failure to approve the amendment would be adverse to the interests of plan participants in the aggregate. Any amendment approved by the Secretary of Labor is to be retroactive only for such limited time period, and is to decrease benefits only to such extent, as is necessary or appropriate to carry out the purposes of the bill and as is necessary or appropriate to provide adequate protection to plan participants and beneficiaries

Your committee's bill provides that a retroactive decrease in benefits approved by the Secretary of Labor is not to eliminate a funding deficiency for purposes of the nondeductible 5 percent excise tax (discussed below). However, a reduction in benefits may be used to correct a funding deficiency for purposes of the 100 percent excise tax on underfunding (discussed below).

Experience losses and gains.—During the course of a pension plan, actual plan experience may turn out to be poorer than anticipated. For example, the value of plan assets may turn out to be less than expected. Where this occurs, there generally will be an "experience loss" which must be funded if the plan is to be able to pay the benefits owed.[5] Since experience losses relate to previously established plan liability, they may indicate that the plan has become underfunded in relation to the required minimum for funding normal costs and past service liabilities. Consequently, your committee believes it is reasonable to require faster funding for these amounts than for newly established past service liabilities. The bill provides that under the minimum funding rules these losses are to be amortized (with level annual payments, including principal and interest) over not more than 15 years (20 years for multiemployer plans) from the date the loss is determined. Your committee believes that a 15-year amortization period generally will provide adequate funding of experience losses, while at the same time protecting employers from potentially severe financial burdens arising from experience losses created by uncontrollable events.

Your committee understands that the 15-year period, while protecting the financial security of plans, generally will not discourage pension plans such as "final average pay plans" which increase accrued benefits as pay increases, and thus are generally desirable from the

[5] However, the bill provides that experience gains and losses are to be determined under the funding method used to determine costs under the plan. It is understood that some funding methods, such as the "aggregate method", do not provide experience gains or losses, but differences between anticipated and actual experience are subsumed in the basic funding requirements of the method. If a plan were to use such a funding method, it is anticipated that the plan would not need to separately amortize experience gains or losses.

employee's view. Additionally, it is believed that under the 15-year requirement employers will not be subject to unnecessary financial burdens where they have experience losses beyond their control.

A pension plan also may have experience gains during the course of its operation. These gains would occur because experience is more favorable than anticipated. For example, the value of plan assets may be greater than expected. The bill treats experience gains symmetrically with experience losses, so that gains are spread over 15 years (20 years for multiemployer plans) from the date they are determined.

The bill provides that changes in accrued plan liabilities resulting from changes in actuarial method or assumptions are to be treated as experience losses (or gains). Additionally, the bill provides that changes in plan cost that result from changes in the Social Security Act (or other retirement benefits created by State or Federal law) or in the definition of wages under section 3121 of the Code are treated as experience losses (or gains). It is expected that the actuarial assumptions for plans affected by social security, etc. now generally will allow for such changes since to a substantial extent these changes may be anticipated. In this circumstance, if changes in plan cost from changes in social security were not treated as experience gains to be amortized, employers with plans that did not properly allow for social security changes might be able to, upon increases in social security payments, substantially decrease current contributions and thereupon plan participants would receive correspondingly less protection.

Your committee recognizes that plan experience rarely conforms to anticipations on a year-by-year basis, but that experience often is close to expectations over a longer period. Therefore, to smooth fluctuations in funding required by amortization of experience gains and losses, the bill provides that experience gains and losses are to be determined at least every three years and generally need not be determined any more frequently. However, under the bill the Secretary of the Treasury may provide by regulations that experience gains and losses are to be determined more frequently than every three years, in particular cases. Your committee expects that this generally will be required only for plans that show an unusual need for frequent calculations, such as for plans with relatively high claims for payments with respect to assets available. (Under the bill, regulations requiring more frequent determination of gains and losses are to be effective with respect to plan years beginning after December 31, 1975, only if approved by the Secretary of Labor. This is to ensure that the rules of the Internal Revenue Service and the Department of Labor with respect to frequency of determination of gains and losses are similar. It is anticipated that similar regulations prescribed by the Secretary of Labor are not to be effective for those years until approved by the Secretary of the Treasury.)

Additional funding standard.—Your committee recognizes that certain plans with a high proportion of nonforfeitable benefits in relation to assets available may not be adequately funded under the basic minimum funding standard. Therefore, an additional minimum funding standard is provided in the bill which is to be used in any year in which it would require a greater amount of plan contributions than would the basic minimum funding standard.

Under the additional funding standard, the plan is to determine unfunded nonforfeitable liabilities (total nonforfeitable liabilities less plan assets). Then the amount required to amortize these unfunded nonforfeitable liabilities over a period of 20 years (including principal and interest) is to be calculated. The amount to be contributed is the first year's payment under that amortization schedule. This calculation is to be repeated each year (on the basis of a new 20 year period) in which the additional funding standard would require a higher contribution than the basic standard. Since the amount of unfunded nonforfeitable liabilities generally will decrease with contributions, in succeeding years the payment under the additional funding standard generally will be less than the prior year's payment. Therefore, this is a declining balance method of funding.

Your committee anticipates that the amount of unfunded nonforfeitable liabilities generally will be reported on an annual basis to the Department of Labor, and, thus, the basic figures required for this calculation will be readily available to most plans. Additionally, your committee understands that this additional standard will apply infrequently but that it will bring about necessary additional funding in the few cases where it will apply.

Variance from funding requirements.—At times an employer's financial circumstances may prevent him from meeting the minimum funding requirements. Your committee does not believe that in such a situation an employer should be forced to abandon his plan. To deal with cases of this type the bill provides that upon a demonstration by the employer of substantial business hardship and a showing that application of the minimum funding requirements would be adverse to the interests of the plan participants in the aggregate, the Internal Revenue Service may waive all or part of the minimum funding requirements for a year, including normal costs, amortization of past service costs and amortization of experience losses. However, to limit the underfunding which may occur in cases of this type, the bill provides that the Service may not waive all or part of the funding requirements for more than five years (whether or not consecutive) in any fifteen-year period.

Also, the Service may not waive amortization of previously waived contributions.

The bill provides that in determining whether substantial business hardship exists for single employer plans, the Service is to take into account factors such as whether the employer is operating at an economic loss (which may not be the same as operating at a tax loss), whether there is substantial unemployment or underemployment in the employer's trade or business, and whether it is reasonable to expect that the plan will be continued only if the waiver is granted. The determination of substantial business hardship is not to be limited to an examination of these factors, however, nor must all these factors be met for there to be a finding of substantial business hardship.

In determining whether a waiver should be granted, your committee contemplates that substantial business hardship generally will only occur in situations where the employer did not foresee, and could not

reasonably have been expected to foresee (at the time the plan or plan amendment which gave rise to the liability in question was established), the event which causes the business hardship. Your committee contemplates that the Service will grant a waiver of funding normal cost only in unusual situations and will make a separate determination for each instance of waiving normal costs. Additionally, your committee expects that each successive application for waiver will be viewed in light of previous waivers' effects on the financial security of the plan, and that only rarely will the Service waive normal cost for more than one or two plan years based on the same business hardship.

The bill provides that if a waiver of funding requirements is in effect, the plan may not be amended in a way that would increase plan liabilities (through increasing benefits, changing the accrual of benefits, or changing the rate at which benefits become nonforfeitable) as long as there are any unfunded waived contributions outstanding under the plan. It is contemplated that generally other plans of the employer may not be established or amended to establish or increase benefits during a period of waiver. However, your committee contemplates that regulations will provide that an employer may reduce waived liabilities at a rate faster than that provided by the minimum funding requirements. It is also expected that in considering whether a waiver should be granted, the Service will weigh as a factor against the waiver any recent plan amendment (e.g., within three years before the request for waiver) that increases plan liabilities.

It is also contemplated that the Service may apply reasonable conditions to a waiver, and, for example, as a condition of waiver the Service may require plan amendments that eliminate previous recent increases in liabilities. It is recognized that the approval of the Secretary of Labor may be required in some cases, however, to retroactively reduce plan benefits. If a plan were to be amended to increase plan liabilities (or if a condition of waiver otherwise were violated) the amount waived and not yet amortized would immediately become part of the current minimum funding requirement in the year the condition is breached (and consequently this amount would immediately be charged to the funding standard account).

The amount waived by the Service must be amortized in no more than 15 equal annual payments (including interest and principal), beginning the year after the year the waived contributions were due. If a shorter period were required, after several years of waiver an employer's total contributions could be so high that it would be quite difficult to meet this obligation, particularly if the employer were just returning to financial stability. The bill provides that the amortization of the amount waived may not itself be waived in subsequent years.

Your committee's bill also provides a special relief provision for multiemployer plans, allowing longer periods to amortize past service costs or experience losses. This extension of time may be allowed if 10 percent or more of the employers contributing to the plan demonstrate to the Secretary of Labor that they would experience substantial

business hardship if required to meet the otherwise applicable amortization requirements. In this case also, however, a variance is not to be allowed unless application of the minimum funding standards would be adverse to the interests of plan participants in the aggregate. In this case the Internal Revenue Service is to extend the amortization period for the time recommended by the Secretary of Labor, up to a maximum extension of 10 years (and therefore a maximum amortization period of 50 years for past service costs and 30 years for experience losses). In determining whether substantial business hardship exists in the case of multiemployer plans, the Secretary of Labor is to take into account factors such as (but not limited to) whether there is substantial unemployment or underemployment within the industry, whether the sales and profits of the industry are depressed or declining, and whether it is reasonable to expect that the plan will continue only if the waiver is granted.

Your committee believes that a strong showing of hardship must be made for longer extensions to be made available and it is intended that only rarely are extensions of more than 5 years to be allowed. Furthermore, as is the case generally with waivers, if the plan is amended to increase liabilities (through an increase in benefits, a change in the accrual of benefits, or a change in the rate of vesting) during the period that the waived liabilities are unfunded, the waiver is immediately to terminate and the waived liabilities are to become a part of the current year's minimum funding requirements. In addition, reasonable conditions may be applied to extensions of amortization periods. For example, if an extension is allowed for amortizing liabilities a corresponding extension might be appropriate for amortizing corresponding experience gains, or amendments that decrease plan liabilities.

Your committee also recognizes that in some situations it would be inappropriate to require multiemployer plans to meet the basic funding requirements. To meet this problem, the bill provides that the Secretary of Labor may prescribe an alternate funding method for a multiemployer plan, determining the annual contributions and credits to the funding standard account. The Secretary of Labor may also prescribe, under the variance procedure, alternative methods for satisfying the requirements of the bill with respect to changing the multiemployer plan's funding method or plan year.

A variance may be prescribed by the Secretary of Labor only after the Secretary holds a public hearing on the plan in question and allows interested persons, including participants and beneficiaries of the plan an opportunity to present their views. In this regard, a variance cannot be granted unless the Secretary of Labor is satisfied (and makes a finding) that all plan participants and other interested persons have received adequate notice from the plan administrator prior to any public hearing on the variance. If a variance is to be granted, the Secretary of Labor, after a public hearing, is to make a finding that the basic funding requirements would increase plan costs to such an extent that there would be a substantial risk that the plan would be terminated, that benefits under the plan would be substantially decreased without the variance, that (if the plan were continued

at its current level) employee compensation would be substantially decreased, or that unreasonable administrative burdens would be imposed on the plan under the basic funding requirements. Additionally, the Secretary of Labor is to make a finding that the basic funding requirements (or discontinuance of the plan) would be adverse to the interests of plan participants in the aggregate. A variance is to be allowed by the Secretary of Labor only for such a limited period as is necessary or appropriate to carry out the purposes of the bill, and to provide adequate protection to plan participants and beneficiaries. In addition, the alternative method prescribed by the variance must also conform to these standards so that the method is necessary or appropriate to carry out the purpose of the bill and the method would provide adequate protection to participants and beneficiaries under the plan.

It is intended that generally applications for variances are to be made before the last day for timely contribution of the amount in question, and are to be acted upon expeditiously by the Internal Revenue Service and the Secretary of Labor.

The funding standard account.—As previously indicated, the bill requires that each covered plan must maintain a funding standard account. The purpose of this account is to facilitate the determination of whether a plan has met the minimum funding standard. A plan will meet the minimum funding requirements only if, at the end of each plan year, the account does not, on a cumulative basis, have an excess of charges for all plan years over credits for all plan years. The account is to be charged each year with the normal costs for that year and with the minimum amortization requirements for past service costs, experience losses, and waived contributions for each year. On the other hand the account is to be credited with the contributions made for the year, with amortized portions of cost decreases, resulting from plan amendments and experience gains, and with any waived contributions.

To determine if the plan meets the minimum funding standard, the funding standard account is to be reviewed as of the end of each plan year. However, the bill provides that an employer may contribute to a plan after the end of his taxable year and up to the date of filing his tax return, and these contributions may relate back to his previous taxable year. Thus, for example, where the plan and taxable years are the same this will allow payments made within this time to relate back to the previous plan year for purposes of the minimum funding requirements and the funding standard account. This should provide an employer with sufficient time to reconcile the funding standard account and make the contributions needed to avoid underfunding.

If the account has a positive balance at the end of the plan year, the employer will have contributed more than the minimum funding standard requires. Since income will be earned on amounts in the plan, the bill provides that this positive balance is to be credited with interest,[6] which will reduce the need for future contributions to meet the

[6] The interest rate or rates to be used to charge or credit the account are to be consistent with the rate or rates used under the plan to determine costs and are to be charged or credited in accordance with regulations.

minimum funding standard. On the other hand, if the funding standard account has a deficit balance, the employer will have contributed less than required under the minimum funding rules, and the deficiency is to be charged with interest. Interest is charged in this case because the deficiency will become larger over time by the amount of income the plan would have earned had the minimum requirements been complied with and therefore the employer will have to pay more to the plan than just the amount he failed to contribute in the plan year. (A plan in existence on the date of enactment will start with a zero balance in its funding standard account on the effective date for the new funding rules applicable to the plan. Similarly, a newly-established plan will start with a zero balance in its funding standard account.)

An example of the operation of the funding standard account for a single employer defined benefit pension plan is described below.

It is assumed that in 1978 the plan is established with a past service liability of $1 million and a normal cost of $70,000. The interest rate used to determine liabilities under the plan for 1978 and for all years in this example is 6 percent per year. It is also assumed that this plan chooses to determine experience gains and losses on an annual basis, rather than every three years, as is generally allowed under the bill. In the first plan year, the employer contributes $138,537. The plan's funding standard account for 1978 will be as follows:

Credits:	
Employer contributions	$138,537
Charges:	
Normal cost	70,000
Amortization—initial past service cost (30 years)	68,537
Total	138,537
Net balance	0

In the year 1979 the plan is amended (effective for 1979), increasing past service liabilities by $100,000. The plan's normal cost for benefits as amended is $75,500. There is a net experience gain of $5,000 over the prior year. In this year, the employer's contribution is $165,975. The plan's funding standard account for 1979 will be as follows:

Credits:	
Employer contributions	$165,975
Amortization—experience gain (15 years)	486
Total	166,461
Charges:	
Normal cost	75,500
Amortization—initial past service liability	68,537
Amortization—past service liability from amendment (30 years)	6,854
Total	150,891
Balance	15,570
Interest on balance	[1] 934
Net balance	16,504

[1] This assumes that all amounts other than interest are charged and credited at the beginning of the year.

In 1980 the normal cost of the plan is $76,200. There is an experience loss for the preceding year of $10,000. The employer contributes $135,572. The plan's funding standard account for 1980 will be as follows:

Credits:	
Employer contributions	$135,572
Amortization—experience gain	486
Total	136,058
Charges:	
Normal cost	76,200
Amortization—initial past service liability	68,537
Amortization—past service liability from amendment	6,854
Amortization—experience loss (15 years)	971
Total	152,562
Net	−16,504
Balance from previous year	16,504
Balance	0
Interest on balance	0
Net balance	0

In case the additional funding standard applies, the funding standard account is to be charged with the excess of the amount to be contributed under the additional funding standard over the amount to be charged as normal cost, amortization of past service costs and experience losses, less the amortized credits for plan amendments that decrease liabilities and for experience gains. (However, to ensure the account is properly maintained, these amounts also are to be charged and credited to the account in this case.)

The funding standard account—special rules—combining and offsetting amounts to be amortized.—Your committee recognizes that the amortization rules may require a plan to keep accounts for amortizing a number of different items. While the amortization charges and credits to be entered in the funding standard account for any one year will net out to a single figure, some may prefer not to maintain a number of different amortization accounts. Therefore, the bill provides that amounts required to be amortized may, at the taxpayer's discretion, be combined into a single amount to be amortized.

The bill provides, pursuant to regulations to be issued by the Secretary of Treasury, that amounts which are amortizable credits and charges may be offset against each other with the balance to be amortized over a period determined on the basis of the remaining amortization periods for all items entering into the credits or charges, whichever is greater. Also, pursuant to regulations, amortizable credits (or amortizable charges) may be combined into one credit or one charge to be amortized over a period determined on the basis of the remaining amortization periods for all items entering into the combined amount. It is expected that if a taxpayer elects to offset or combine amounts to be amortized, this election will apply to all amounts (both charges and credits) required to be amortized for the year of election.

An example of the netting and combining of amortizable amounts by a single employer plan is described below.

It is assumed that the plan has no past service cost. It is also assumed that the plan chooses to determine experience gains and losses on an annual basis rather than every three years as is generally allowed under the bill. In year 1, the plan has an experience loss of $40,000. In year 2, the plan has an experience gain of $15,000. In year 3, the plan has an experience loss of $10,000. In all these years the plan uses a 5-percent per annum interest rate in computing its plan costs.

The $40,000 experience loss that occurs in year 1 must be amortized over 15 years, requiring annual payments of $3,670. The first payment to amortize this amount is made in year 2.

At the end of year 2 (after one payment of $3,670) the remaining unamortized balance of the $40,000 experience loss is $38,145.[7]

The $15,000 experience gain that occurs in year 2 also is to be amortized over 15 years. Alternatively, it may be combined with the remaining experience loss of $38,145, reducing the unamortized loss by ($38,145 minus $15,000) to $23,145. It is expected that under regulations to be issued by the Secretary of the Treasury, the balance of $23,145 may be amortized over 14 years (the remaining amortization period of the greater amount), in equal annual payments of $2,227. At the end of year 3 (after one payment of $2,227) the remaining unamortized balance of the netted experience loss and gain is $21,964 (requiring annual payments of $2,227 over 13 years).

The $10,000 experience loss that occurs in year 3 would be amortized over 15 years in equal payments of $918 per year if it were to be separately computed and amortized. On combining this loss with the previous net experience loss, the base for amortization is ($21,964 plus $10,000) or $31,964. It is anticipated that under regulations to be issued by the Secretary of the Treasury this amount may be amortized by 13 annual payments of $3,145 ($2,227 plus $918) and thereafter one payment of $1,780.

Special rules—the full funding limitation.—In some cases, the difference between the total liabilities of the plan (all accrued liabilities including normal cost) and the total value of the plan assets may be smaller than the minimum funding requirement for the year. For example, this could occur where the plan assets had increased substantially and unexpectedly in value. Where the excess of total plan liabilities over assets is less than the minimum funding requirement otherwise determined, your committee believes that an employer should not have to contribute more than the amount of this excess liability, for upon contribution of this amount the plan will become fully funded. As a result, in this case the bill provides that the amount to be charged to the funding standard account (and to be contributed), is to be limited to the difference between the total liabilities of the plan and the fair market value of the plan assets. Since the full funding limitation reduces the amount otherwise required to be contributed to a plan, it appears appropriate to use the lower of fair market value or the value of plan assets as normally determined. (As discussed below, the value of plan assets as normally determined may be greater than fair market value in certain cases and in such situations use of the normal valuation method could inappropriately limit contributions to a plan.)

[7] This is based on the assumption of a 5 percent interest charge on the unpaid balance during the year.

When the full funding limit applies, the amortization schedule for charges and credits to the funding standard account are to be considered as fully amortized, and these schedules generally are to be eliminated from the calculations under the funding standard account. However, if the plan is amended in later years to increase plan liabilities, a new amortization schedule would be established with respect to this increase in liabilities. For years after the full funding level is reached, the funding standard account will continue to be charged with the normal cost of the plan. Consequently, unless asset values increase correspondingly with the increase in plan liabilities, eventually the full funding limitation will not be applicable and the employer will have to make contributions to the plan to meet the minimum funding requirements.

If the employer fails to make the required contributions in a year in which the full funding limitation is applicable, the excise tax (described below) on underfunding in that year is to be based only on the amount that should have been contributed, given the full funding limitation.

For the purpose of calculating the full funding limitation, the bill provides that plan liabilities (including normal cost) are to be determined under the funding method used by the plan to determine costs for the year, if the liabilities can be directly calculated under this funding method. However, if this cannot be done under the plan's funding method, in order to allow the full funding limitation to apply, the bill provides that the accrued liabilities are to be calculated under the entry age normal method, solely for the purpose of determining the application of the full funding limitation.

Whether the full funding limitation applies generally is to be determined at the end of the plan year, after all plan liabilities for that year have accrued. For purposes of the full funding limitation, the value of plan assets generally is to be determined as of the usual valuation date for the plan. Since, as discussed above, contributions generally can be made to a plan after the end of a plan year and yet relate back to the previous plan year, there should be no timing problem with respect to such year-end calculations.

Special rules—money purchase pension plans.—Generally, the funding standard account for money purchase pension plans is to be charged annually with the amount that must be contributed for the year under the plan formula, and is to be credited with the amount that is paid. As a result, employers who have these plans must annually make the payments required under the plan. If the employer does not make sufficient contributions to meet the minimum funding requirements, he is to be subject to the excise tax described below. However, the Internal Revenue Service may waive the contributions required, in the same manner as it may waive these contributions for defined benefit pension plans.

For purposes of the funding rules, a "target benefit plan" generally is to be treated as a money purchase pension plan. However, a plan (for example, a so-called Taft-Hartley plan) that provides an agreed level of benefits and a specified level of contributions is not to be considered a money purchase pension plan if the employer or his representative participated in the determination of the benefits.

Special rules—collectively bargained plans and plans of controlled groups.—Plans maintained pursuant to a collective bargaining agreement between employee representatives and one or more employers often provide for a predetermined level of contributions over a period longer than 12 months. Your committee believes that for the funding requirements to be workable in these cases, employers generally must be allowed to base their contributions on the bargained and agreed upon basis. Consequently, for purposes of maintaining the funding standard account, a plan year of a plan maintained pursuant to a collective bargaining agreement generally is to be considered as extending for the term of the collective bargaining agreement. This provision is intended to adapt the minimum funding standard to those plans where contributions are fixed by contract in accordance with a fixed standard, such as a specific dollar amount per hour of covered employment or a specific dollar amount per ton of coal mined.

Under such a plan if the actuarial assumptions were reasonable and the actuarial calculations were correct as of the beginning of the term of the agreement, and the agreed contributions were made, there would be no deficiency in the funding standard account for the term of the collective bargaining agreement. Any experience loss could be made up by adjustment of the contribution rate or the level of benefits for the term of the next agreement. The special definition of plan year would not affect the required periods of amortization or the computation of the excise tax; also, with respect to collectively bargained plans it is intended that experience gains and losses generally are to be determined at the end of each contract period, or at the end of every 3 calendar years if more appropriate for the particular plan.

The bill also provides that, to meet the needs of other collectively bargained plans, the Secretary of the Treasury may issue regulations that provide other periods that may be treated as plan years. For example, it is understood that some multiemployer collectively bargained plans are based on a number of contracts, each expiring at different times. It is expected that in this case the regulations would provide that the plan could use a 12-month period (or perhaps longer period if needed) for the plan year. In this case, when experience losses are determined, the plan trustees could arrange for an increase in contributions for the next year, or could arrange for a decrease in future benefits to allow negotiations to occur later to increase contributions. Additionally, as discussed above, limited retroactive plan amendments would be allowed without the approval of the Secretary of Labor for up to 2 years after the end of the plan year, so benefits could be reduced to a limited extent if needed to avoid a funding deficiency.

The bill also provides that in the case of collectively bargained plans, the minimum funding standard is to be determined as if all participants in the plan were employed by a single employer. The bill provides the same treatment for deduction purposes. This merely restates existing law.

In the case of a plan adopted by more than one corporation which is a member of a controlled group of corporations (within the meaning of section 1563(a) of the Code without regard to section 1563(a)(3)(C)) the bill provides that the minimum funding standard

and the excise tax on underfunding and the new rules with respect to maximum deduction limits (described below) are to be determined as if all members of the controlled group which adopted the plan were a single employer. Allocations of the minimum funding requirements, excise tax liability and deduction limits between members of the controlled group are to be determined under regulations prescribed by the Secretary of the Treasury.

Exclusions from coverage—insured plans.—If a pension plan is funded exclusively with certain individual insurance contracts, the bill provides that the plan is not subject to the minimum funding requirements. Your committee believes that if qualified insurance contracts are used to fund a plan and payments are timely made, the plan will be properly funded.

The contracts that are to qualify for this treatment are level annual premium individual insurance contracts where the premium is paid from the first date of an individual's participation in the plan (and from the time an increase in benefits becomes effective) and is not paid beyond the individual's retirement age. Also, the benefits under the plan must be the same as the benefits provided by the individual contracts at normal retirement age. In addition, the benefits must be guaranteed by the insurance company to the extent that premiums are paid. For the contracts to qualify, the insurance company must be licensed to do business in the State where the plan is located. Furthermore, premiums for all plan years must have been timely paid or the policy reinstated. In addition, rights under the contracts must not have been subject to a security interest during the plan year, and no loans must have been made on the policy during the plan year.

If any of these requirements are not satisfied, then the normal rules with respect to the funding standard must be followed. If a plan is initially funded with qualified insurance contracts, but, *e.g.*, a contract payment is not made, then the plan will become subject to the minimum funding rules and an excise tax may be owed (as described below) if the plan funding falls below the minimum standard. (Generally, if the payments had been timely made until this time, the funding standard account for the year of nonpayment would start with a zero balance, the accrued plan liabilities and properly amortized amounts would be charged to the account for the year in question, and any excise tax owed would be based on the net charges to the funding standard account for that year.)

Exclusions from coverage—profit-sharing plans, etc.—Under present law profit-sharing and stock bonus plans do not require a definite predetermined formula for determining the portion of profits to be shared annually with the employees. Since the contributions to these plans may be varied substantially year-by-year under the plan, your committee believes that it is inappropriate for profit-sharing and stock bonus plans to be governed by the minimum funding standard.

On the other hand, employer contributions under money purchase pension plans must be definitely determinable and fixed without being geared to profits. It is appropriate for these plans to be governed by the minimum funding standard since the application of this standard (as under present law) will require the employer to make definitely determined contributions to the plan.

Your committee intends that plans generally are to be considered money purchase pension plans which meet the "definitely determinable" standard where the employer's contributions are fixed by the plan, even if the employer's obligation to contribute for any individual employee may vary based on the amount contributed to the plan in any year by the employee. For example, it is expected that a matching plan which provides that an employer will annually contribute up to 6 percent of an employee's salary, but that this contribution will be no more than the employee's own (nondeductible) contribution, will meet the "definitely determinable" criteria. In this case, the employer's contributions are set by the plan, will not vary with profits, and cannot be varied by the employer's action (other than by a plan amendment). (Of course, the plan must meet the nondiscrimination and other requirements of the Code to be qualified.)

Your committee understands that some plans are based solely on contributions from participating employees, without contributions of employers. In this case, your committee believes it would be inappropriate to make the employer responsible for the contributions of his employees. Consequently, where the plan has not provided for any employer contributions at any time after the date of enactment of the bill, the plan is to be exempt from the minimum funding standards and the excise tax on underfunding. Similarly, it would be inappropriate for the employer to be responsible for voluntary employee contributions, and consequently, voluntary contributions (and benefits attributed thereto) are to be disregarded for purposes of the minimum funding standard and the excise tax on underfunding.

Exclusions from coverage—government plans and church plans.—It has been argued that government plans should be exempt from the funding standards since the taxing power can be viewed as a practical substitute for these standards. On the other hand, your committee is concerned with reports that in the case of a number of governmental units, such generous pension promises have been made and so little funds have been set aside currently, that the practical likelihood of imposing sufficient taxes to pay those benefits may be open to question. In view of this conflict, your committee does not believe present law should be changed at this time regarding government plans which are qualified under the Federal tax laws.

The bill, therefore, provides that any tax-qualified government plan that meets the requirements of existing law with respect to funding will be exempt from the new minimum funding requirements. (This generally means that these plans must currently contribute normal cost plus interest on unfunded past service cost.) This exemption will apply both to existing and newly-established government plans.

In view of the information received with respect to possible underfunding problems of the plans, the bill provides that your committee and the Committee on Education and Labor are to study whether plans maintained by Federal, State, or local governments are adequately funded (taking into account the new minimum funding standards of the bill). Your committee and the Committee on Education and Labor is to submit to the House of Representatives the results of this study together with recommendations on funding standards for government plans by December 31, 1976.

Under the bill, government plans are plans established and maintained for their employees by the United States Government, or by the government of any State or political subdivision of a State, or by any agency or instrumentality of such governments. Also, except for the study described above, a plan to which the Railroad Retirement Act of 1935 or 1937 applies is to be treated as a government plan.

The bill also generally exempts church plans from the new funding requirements if these plans meet the funding requirements of present law. However, a church plan may elect to have all the provisions of the Internal Revenue Code regarding participation, vesting, funding, and form of benefit apply. If such an election is made, then the minimum funding provisions will apply to the plan. (Under the bill, once it is made, the election is irrevocable.)

A church plan is defined under the bill as a plan established and maintained by a church (or convention or association of churches) that is tax-exempt under section 501 of the Code. However, a church plan does not include a plan established and maintained primarily for the benefit of persons employed in connection with an unrelated trade or business. Nor does a church plan include a multiemployer plan if one or more employers are not tax-exempt under section 501 of the Code as a church (or convention or association of churches). With respect to plans in existence on January 1, 1974, if the plan applied on that date to employees of any tax-exempt agency of a church (or convention or association of churches) which established and maintained the plan, then the employees of the agency are to be treated as employees of the church (or convention or association of churches).

Actuarial considerations—enrollment of actuaries to practice before the Internal Revenue Service.—Defined benefit pension plan costs generally are actuarial estimates of future costs of the plan. In estimating pension costs, actuaries must make assumptions ("actuarial assumptions") about a number of future events, such as the rate of return on investments ("interest"), employees' future earnings, and employee mortality and turnover. Actuaries also must choose from a number of methods to calculate future plan liabilities. The amounts required to fund any given pension plan can vary significantly according to the mix of these actuarial assumptions and methods. As a result, the assumptions and methods used by actuaries are basic to the application of minimum funding standards for defined benefit pension plans.

Your committee believes that actuaries who perform services for qualified pension plans and report to the Internal Revenue Service regarding these plans should meet a reasonable standard of competence and be held to a standard of reasonableness in choosing their methods and assumptions. The bill requires that the actuarial assumptions which are used are to be reasonable in the aggregate; this restates present law. However, there is no existing government regulation of the actuarial profession as there is, for example, for lawyers and accountants. Te resolve this problem, the bill provides that standards and qualifications are to be established for enrolling actuaries to practice before the Internal Revenue Service (with regard to actuarial matters only).

Under the bill, the standards and qualifications to be satisfied for enrollment as an actuary are to include education and training in

actuarial mathematics and methodology, and an appropriate period of actuarial experience. The education and training requirement is to be evidenced by a degree in actuarial mathematics or its equivalent from an accredited college or university, successful completion of an examination in actuarial mathematics and methodology to be given by the Secretary of the Treasury, or successful completion of other actuarial examinations deemed at least equivalent to those given by the Secretary. Your committee anticipates that actuaries also will be enrolled to practice before the Department of Labor with respect to pension plans. In order to make the enrollment requirements uniform for practice before the Internal Revenue Service and the Department of Labor, regulations issued by the Secretary of the Treasury with respect to standards and qualifications for actuaries are to be effective after December 31, 1975, only if approved by the Secretary of Labor. (Similarly, your committee anticipates that regulations issued by the Secretary of Labor with respect to qualification of actuaries are to be effective after that date only if approved by the Secretary of the Treasury.)

In addition, at the Service's discretion, the examination may be waived (for a limited period) for persons who present independent evidence that demonstrates they have special competence in actuarial matters relating to pensions because of their experience at the time the enrollment system is instituted. Your committee contemplates that the procedure for enrollment of actuaries will appropriately recognize the need for independent, competent professional work, and consequently practice without enrollment will be allowed only in unusual cases.

Your committee intends that the Secretary also establish duties relating to practice before the Internal Revenue Service by actuaries who are enrolled to practice. These duties may be similar to those required for attorneys, certified public accountants, and others who practice before the Internal Revenue Service, appropriately modified to take account of the special requirements of actuarial practice. For example, it is contemplated that the regulations will require an enrolled actuary to notify the Secretary if he discovers that an actuarial statement he prepared was not filed with the Secretary.

In formulating enrollment regulations, it is the committee's intent that the Secretary recognize to the extent feasible the varying degrees of actuarial skill required in the examination of different types of plans. For example, it is understood that many smaller and simpler plans are administered on the basis of standard actuarial tables which are widely published and on the basis of standard earnings assumptions. In these cases your committee has been informed that contributions have been adjusted from time to time to reflect deviations between actual plan experience and the standard actuarial and interest assumptions used. To the extent feasible, it is anticipated that the Secretary will make it possible to use such standard tables, etc., in the examination of these smaller and simpler plans, and make it possible for this work to be done by persons with the needed education and experience in pension plan administration whether or not their training includes the highest level of actuarial skills. The limited number of persons with a high level of actuarial skills makes it desirable that the standards acceptable for those examining smaller and simpler

plans not be as restrictive as in the case of those examining the larger plans.

It is contemplated that the Secretary of the Treasury would reserve the power to suspend from practice before the Service any person enrolled to practice as an actuary after due notice and opportunity for hearing. Discipline might be imposed upon an enrolled actuary shown to be incompetent, or who does not comply with the rules and regulations established by the Secretary. Your committee intends that proceedings brought against enrolled actuaries will be instituted in the same general manner as proceedings against others practicing before the Service and will follow the same general procedure as other disciplinary proceedings. Generally, disciplinary proceedings would involve a complaint served on the actuary, an opportunity for answer, and an evidentiary hearing before a hearing examiner who would render a decision (appealable to the Secretary of the Treasury). An actuary involved in such a proceeding would have a right to be represented by counsel. It is contemplated that the discipline imposed could include suspension from practice before the Service, and that under appropriate circumstances a petition for reinstatement could be granted.

Actuarial considerations—reports of actuaries.—The Internal Revenue Service must receive detailed information on the actuarial assumptions and methods used to be able to evaluate whether costs of a qualified defined benefit pension plan have been properly determined. To resolve this problem, the bill requires periodic actuarial reports to be filed with the Internal Revenue Service by plan administrators of defined benefit plans subject to the new minimum funding standard. Consequently, actuarial reports will not be required for plans funded through qualified insurance contracts, and profit-sharing and money purchase plans, among others. However, actuarial reports will be required of any defined benefit plan subject to the new minimum funding standard, whether or not it remains tax-qualified.

Actuarial reports are to be made for the first plan year (or the first plan year to which this section applies) and every third year thereafter. Under the bill the Secretary may require more frequent reporting if necessary. The Secretary might require more frequent reporting in particular cases (for example, where a plan is to determine experience gains or losses more frequently than every three years) or in all cases if necessary. If the plan administrator fails to timely file the required actuarial reports, he will be subject to a penalty of $1,000 for each such failure unless it was due to reasonable cause.

Under the bill, the plan administrator generally is the person designated as such by the plan instrument. If no administrator is so designated, the administrator will be the employer for a single employer plan, and will be the joint board of trustees, etc., for a plan maintained by several employers or several employers and an employee organization. In other cases, the plan administrator will be the person prescribed by regulations issued by the Secretary of the Treasury.

The periodic actuarial reports must be prepared and signed by actuaries enrolled to practice before the Internal Revenue Service. The reports must include a description of the plan, a description of the funding method and actuarial assumptions used to determine costs under the plan, a certification as to whether the plan is adequately

maintaining a funding standard account, and any other information regarding the plan as the Secretary may require. For example, it is contemplated that the periodic reports will include detailed information on the basis for any change in actuarial assumptions.

The actuary who prepares the reports must certify that, to the best of his knowledge, the report is complete and accurate. He must also certify whether, in his opinion, the funding method is reasonable and the actuarial assumptions used to determine the plan costs are reasonable in the aggregate. It is contemplated that the actuary will be subject to discipline and may be suspended from practice before the Internal Revenue Service if he falsely certifies a report.

Actuarial considerations—actuarial assumptions, methods, valuation of assets.—Since actuarial calculations determine plan costs, the bill includes several basic rules regarding these calculations. Under the bill, plan liabilities must be determined on the basis of actuarial assumptions that, in the aggregate, are reasonable. Your committee recognizes that frequently there is a range of actuarial assumptions which may be appropriate for determining the costs of a defined benefit pension plan, and the choice of the appropriate assumptions is very much a matter of judgment. In this circumstance, an employer may attempt to substitute his judgment for that of his actuary, which may lead to situations where plan costs are not being independently determined by an actuary. Your committee believes that it is inappropriate for an employer to substitute his judgment in these matters for that of a qualified actuary, and it is contemplated that if such a circumstance were to arise an actuary would have to refuse giving his favorable opinion with regard to the plan.

Since the actuarial assumptions used must be reasonable in the aggregate, it is anticipated that, on audit, the Internal Revenue Service will (as presently) require a change of assumptions where they do not meet this standard. However, unless the assumptions used are substantially unreasonable, it is contemplated that generally the Service will not require a change of assumptions to be made effective for years prior to the year in which the audit is made.

Under the bill, plan liabilities are to be determined under the funding method used generally to determine costs under the plan. In addition, since a change in the actuarial method used can have a substantial effect on a plan's cost, the bill also provides that the Internal Revenue Service must approve, pursuant to regulations, a change in the plan's funding method before the new method may be used to calculate plan costs. Similarly, approval must be obtained for a change of the plan year before the new year may be used by a plan. It is expected that the regulations under this provision will establish rules similar (but appropriately modified) to the regulations governing approval of changes in accounting methods. Therefore, it is expected that generally before a change in actuarial method or plan year will be approved a taxpayer must establish a substantial business purpose for the change and that consideration will be given to all the facts and circumstances with respect to the change. It is contemplated that a change in funding method is to be allowed only if it does not significantly adversely affect the funding of the plan. Also, your committee contemplates that upon approving a change in actuarial method or

plan year, conditions are to be established to prevent distortion of income or distortion of funding of the plan.

Your committee recognizes that there are a substantial number of accepted methods of valuing assets of pension plans and many of these methods are designed to take into account market value and also to level out short-run market swings. Your committee believes that such valuation methods are appropriate since sharp, short-run variations in asset values could significantly affect the required funding if fair market value were the only accepted method of valuing assets for funding purposes. This would be inappropriate since pension plans are funded to meet the needs of the long-run, frequently over an employee's whole working life. On the other hand, your committee also recognizes that pension plans must value assets in a way that takes into account market value. Otherwise, there may be no relation between a plan's funding program and the assets actually available to pay benefits.

Under the bill, generally plan assets are to be valued on the basis of any reasonable actuarial method of valuation that takes into account fair market value, pursuant to regulations to be issued by the Secretary of the Treasury. (Your committee anticipates that plan assets also will be valued for purposes of minimum funding requirements that are to be administered by the Department of Labor. In order to provide for a uniform valuation of assets, Treasury regulations with respect to valuation which apply to plan years beginning after December 31, 1975, are to be effective only if approved by the Secretary of Labor. Similarly, your committee anticipates that regulations applying to such plan years issued by the Department of Labor are to be effective only if approved by the Secretary of the Treasury.)

Your committee anticipates that fair market value generally would be an acceptable valuation method. On the other hand, it is contemplated that using cost or book value without taking account of changes in fair market value would not be an acceptable valuation method.[8] However, it is intended that acceptable valuation methods may include (but not be limited to) the use of a moving average (over, *e.g.*, five years), or increasing asset values each year by a stated percentage of the previous year's asset value under the assumption that an even long-range appreciation will occur (in some cases, this increase may be reduced by realized appreciation or other income received from the asset). Another alternative method may be to capitalize the current amount of income from each asset as a perpetuity, using the plan valuation rate of interest. For a valuation method to be reasonable, it is expected that the asset values obtained under the method of valuation used are to bear a reasonable relationship to fair market value, and that if fair market value and the value under the method used differ significantly over a period of several years that the value under the plan would be adjusted accordingly. However, where an unacceptable method is being used by an existing plan, it is contemplated that the Service will allow a transition so that the plan will have time to write up its asset values. Furthermore, it is expected that the method chosen must be used consistently by the plan.

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[8] However, in a case where fair market value tended to fluctuate around cost, a reasonable actuarial method may determine that cost is the appropriate value.

It is also expected that the regulations will provide reasonable methods for valuing life insurance or annuity contracts, which will recognize the special nature of such contracts for valuation of pension plans.

Your committee also recognizes that often a pension plan will acquire bonds or other debt instruments as a long-term investment to be held until maturity. In that event, it would seem inappropriate to require the plan to change its valuation of the bond in accordance with market fluctuations. Therefore, the bill provides that a plan may elect to value its bonds or evidence of indebtedness on an amortized basis. At the election of the plan, the amortization may run from initial cost at purchase to par value at earliest call date or to par value at maturity. This election is to be made at the time and in the manner prescribed by regulations. The election is to be revocable only with the consent of the Internal Revenue Service and is to apply to all bonds and evidences of indebtedness owned by the plan. Although the bill explicitly recognizes this as one reasonable method of valuation that a plan may use to value bonds or evidences of indebtedness, other valuation methods may be used for these assets. (Also, it may be reasonable to use the method explicitly recognized for bonds or indebtedness for valuing other assets.)

Actuarial considerations—actuarial advisory board.—Your committee believes that the Secretary of the Treasury could be significantly aided in resolving a number of problems regarding actuaries and actuarial assumptions, etc., if he had the advice of experienced actuaries drawn from different areas of practice. Accordingly, your committee intends that the Secretary establish an advisory board chosen from among experienced actuaries in government, teaching, business and insurance, and independent consulting practice.

Your committee intends that the board advise the Secretary in such matters as the enrollment system for actuaries, reasonable standards and criteria for determining actuarial assumptions to be used for plans, and determining what constitutes generally accepted principles of actuarial practice.

Enforcement.—The sanctions under present law on the failure to meet the minimum funding requirements appear to have little effect on an employer's decision to fund a plan at the required minimum levels. To resolve this problem, the bill imposes an excise tax on the employer if he fails to fund the plan at the minimum required amounts (only if a waiver has not been obtained).

The tax initially is to be 5 percent of the accumulated funding deficiency—the excess of charges over credits in the funding standard account—at the end of the plan year. If a plan year ends with an aggregate funding deficiency, the employer will owe a 5 percent excise tax on the deficiency and that tax may be due for the taxable year of the employer with or within which the plan year ends. Furthermore, a deficiency in a prior year will continue in later years (and will be increased with interest), until paid. The 5 percent tax will apply to each year (of the employer) in which there is a funding deficiency at the end of the plan year. For example, if there is a funding deficiency in 1978 that is not corrected until 1980, there will be a 5 percent tax on the 1978 deficiency and a 5 percent tax on the 1979 deficiency (which will be the same as the 1978 deficiency plus interest).[9] If the

deficiency is corrected within the time allowed for contributions for the year 1980, there would be no 5 percent tax for 1980.

In any case in which the 5 percent tax is imposed and the accumulated funding deficiency is not corrected within the correction period allowed after notice by the Internal Revenue Service, a 100 percent tax equal to the accumulated funding deficiency (to the extent not corrected) is to be imposed on the employer. In accord with present law respecting the excise taxes with regard to private foundations, neither the 5 percent nor the 100 percent taxes are to be deductible.

As discussed above, the bill provides that an employer's contributions to a plan that are made by the time for filing its tax return can relate back to the year of that return. Consequently, generally an employer will have a period of time after the close of the plan year to contribute to the plan and avoid the excise tax on underfunding. In addition, the bill provides that for purposes of the minimum funding requirements, a plan can be amended to a limited extent without the approval of the Secretary of Labor after the close of the plan year, but by the time for filing the employer's return for the taxable year with or within which the plan year ends (in the case of multiemployer plans, the amendment may be within two years of the close of the plan year). This allows limited retroactive decreases in plan benefits so liabilities for the excise tax can be reduced when there has been a mistake in estimating the amount of benefits that an employer could properly fund.

As discussed above, under certain conditions a plan also may be retroactively amended with the approval of the Secretary of Labor for earlier years. Such a retroctive amendment is not, however, to eliminate a funding deficiency for purposes of the initial 5 percent tax, although it may constitute correction for purposes of the 100 percent tax.

The minimum period allowed for correcting any funding deficiency after notice from the Service is 90 days from the date of mailing a notice of deficiency with respect to the 5 percent tax. However, this period may be extended for the time that the Internal Revenue Service determines is reasonable and necessary to eliminate the accumulated funding deficiency (and is automatically extended for any period in which a deficiency cannot be assessed under section 6213(a) relating to petitions to the Tax Court). It is intended that the Secretary require significant reasons before granting an extension under this provision.

It is intended that reasonable conditions may be applied to any extension of time, such as (but not limited to) a requirement that regular payments be made toward funding the deficiency and such as not allowing a plan amendment that increases plan costs until the deficiency is paid off. Correction generally will be made by paying off the principal amount of the funding deficiency plus interest to the date of payment, at the rate used to determine plan costs for the years the deficiency remained unpaid.[10]

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[9] Of course, if an employer fails to contribute a plan's normal cost in any year, that amount will not thereafter become a past service cost (or experience loss to be charged in amortized amounts. The funding standard accounts will show as a deficiency subject to tax each year until corrected the unpaid normal cost plus interest (as well as any unpaid past service cost, plus interest).

[10] It is contemplated that if a plan becomes subject to the full funding limitation after it has an accumulated funding deficiency that no correction will be required, but the nondeductible 5 percent first level excise tax will be owed for each year in which there is an accumulated funding deficiency.

In the usual case, the excise taxes will be owed when a deficiency is showing in the plan's funding standard account. However, as under present law, where the actuarial assumptions used in determining the minimum funding requirements are unreasonable in the aggregate, the Service may on audit retroactively (for open years) require a change in these assumptions. Such a change may result in a change in the plan's funding standard account. If a funding deficiency occurs as a result of such change, an excise tax may be levied. It is expected that retroactive changes of actuarial assumptions would occur only where the initial assumptions used were substantially unreasonable.

The bill provides special rules for applying the excise tax to collectively bargained plans. Generally, the "plan year" for a collectively bargained plan will be considered to be the contract period. If, at the beginning of that contract period, the actuarial assumptions used in setting the plan contributions are reasonable in the aggregate, and the actuarial calculations are correct, then generally no excise tax will be owned by employers who timely pay their appropriate share of the plan contributions during the contract period. However, to the extent that plan contributions are not timely paid, the funding standard account may show a deficiency and an excise tax would be owed. (The excise tax would be owed on the basis of the employer's taxable year and not on the basis of the plan year which runs for the period of the contract.) When a plan has such an accumulated funding deficiency, generally the tax will be imposed only on the employers who do not timely contribute, since the underfunding is the result of their failure to contribute.

At the end of a contract period, even assuming that all contributions were timely made, a collectively bargained plan can have experience losses. In that event, the next contract must provide for the experience loss. This generally will be by higher contributions, though it could also be by amending the plan to decrease benefits. If appropriate adjustments in contributions or benefits do not occur, then the plan will have a funding deficiency and an excise tax will be owed. Liability for this tax is to be determined first on the basis of failure to meet the required employer contributions under the plan, and then on the basis of respective liabilities for contributions under the plan.

The bill also provides special rules for applying the excise tax to a controlled group of corporations. Under the bill, if corporations that are members of a controlled group (defined by section 1563(a) of the Code without regard to section 1563(e) (e) (C)) adopt a plan, the excise tax on underfunding is to be determined as if all the corporations were a single employer, and the tax is to be allocated to each corportion in accord with regulations prescribed by the Secretary of the Treasury. It is expected that generally the minimum funding requirements will be allocated proportionately to the relative amount of plan liabilities attributed to the employees of such corporation and any funding tax will be allocated in proportion to failures to make these required minimum contributions.

Maximum deductions for plan contributions.—If an employer wishes to deduct contributions to an employee benefit plan which are greater than the minimum contributions required, the amount deductible will be subject to the maximum deduction limits.

Contributions to a pension plan presently are deductible under three alternative provisions, the "5 percent" method which allows deductions to be taken for contributions not in excess of 5 percent of the annual compensation of the covered employees (sec. 404(a)(1)(A) of the code), the "level cost" method (sec. 404(a)(1)(B) of the code), and the "normal cost" method (sec. 404(a)(1)(C) of the code).

Unlike the "level cost" method and the "normal cost" method, the 5-percent limitation on contributions is often unrelated to the funding needs of the pension plan, for it frequently is not determined by the level of benefits provided by the plan. Consequently, the 5-percent method has allowed employers to contribute and deduct more than is reasonably needed to fund a pension plan.

The bill repeals the 5-percent deduction limitation (present sec. 404(a)(1)(A) of the code). Thus, deductible contributions under a qualified pension plan generally are to be limited under either the "level cost" or the "normal cost" methods. However, in place of the 5 percent limitation, the bill adds a new sec. 404(a)(1)(A) (discussed below) relating to contributions needed to meet the minimum funding standard.

The "normal cost" method (sec. 404(a)(1)(C) of the Code) presently allows a maximum deduction of normal cost plus 10 percent of unfunded past service costs. The 10 percent figure includes interest as well as principal, and therefore this method is not the same as 10-year amortization.[11]

To put the minimum contribution requirements and maximum deduction limitations on a comparable basis, the bill amends the "normal cost" deduction limitation rules to allow a maximum deduction of normal cost plus amounts needed to amortize past service costs in ten equal annual payments (including principal and interest). Under this provision, initial past service costs could be amortized over ten years from the date established (past service cost established by plan amendment could be amortized over ten years from the amendment, and experience losses could be amortized over ten years from the date they are determined). The maximum deduction for any year would be the amount determined under ten-year amortization and no more than this amount could be deducted in any year even though less than this amount were contributed in a prior year.

Your committee recognizes that under the minimum funding rules an employer might have to contribute more than the maximum allowed for deduction under the "level cost" or "normal cost" limits. For example, this could occur if the employer corrected a substantial funding deficiency for a prior year. Consequently, the bill provides that in such cases if the minimum funding standard requires a contribution to a tax-qualified pension trust which is greater than the maximum amount otherwise deductible, the amount contributed to satisfy the minimum standard is to be deductible. However, this rule does not apply to contributions to plans that are subject to the minimum funding standard but are not tax-qualified. Additionally, contributions must meet the requirements of sec. 162 before being deductible under sec. 404.

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[11] Since the 10 percent figure includes interest as well as principal, it is estimated that, depending upon the interest rate, an employer usually may deduct amounts needed to fund accrued past service costs over 12–14 years.

In order to put the minimum funding requirements and maximum deduction limits on a compatible basis, the bill also provides that the funding method and actuarial assumptions used to determine the amount deductible are to be the same as the method and assumptions used to determine the minimum funding required. In addition, the maximum amount deductible generally cannot be more than full funding limitation of the minimum funding standard; otherwise, deductions would be allowed for contributions greater than needed to fund the plan.

Present law generally allows deductions for contributions to overlapping combinations of pension, profit-sharing, and stock bonus plans of up to 25 percent of compensation paid or accrued to all the employees who are beneficiaries under the plans. In some cases, where there has been a previous contribution greater than the deductible limits, the deduction can be up to 30 percent of aggregate compensation. In accordance with the decision to limit contributions to defined contribution plans to 25 percent of employee compensation, the bill provides that maximum deductions for contributions to overlapping plans are to be 25 percent of aggregate compensation, and the provision for an additional 5 percent for carryovers is to be eliminated.

Under present law, contributions by an accrual basis taxpayer made by the time for filing his tax returns may be treated as paid in the year for which the return is due. This allows taxpayers time after the close of their taxable year to determine the amount of their contributions to be made to a plan. The bill extends this rule to cash basis taxpayers.

With regard to collectively bargained plans, the bill (as present law) provides that the maximum deduction limits are to be determined as if all participants in the plan were employed by one employer. Further, the bill provides that the amount contributed by each employer under a collectively bargained plan will not exceed the maximum deduction limitation if the anticipated employer contributions for the plan year are no greater than the limitation. With respect to a plan adopted by several corporations that are members of a controlled group, the maximum deduction limitations are to be determined as if all employers were a single employer, and deductible amounts are to be allocated in accordance with regulations to be prescribed by the Secretary of the Treasury.

Effective dates

The new minimum funding requirements and the new rules with respect to deductions generally are to apply to plan years beginning after the date of enactment of the bill. However, with respect to plans in existence on January 1, 1974, the new funding standards and deduction rules are to apply to plan years beginning after December 31, 1975. If a plan existing on January 1, 1974, is maintained by a labor organization exempt under section 501(c)(5) of the Code exclusively for the benefit of the employees of the organization, the new funding rules are to apply to this plan for plan years beginning after December 31, 1980, or beginning after the last day of the second convention of the labor organization occurring after enactment of the bill, whichever is earlier.

If an existing plan is maintained under a collective bargaining agreement, then the new funding standard and deduction rules are to

apply to plan years beginning after December 31, 1980, or the date on which the agreement terminates, whichever is earlier. The date of termination is to be determined without regard to any extension agreed to after the date of enactment of the bill.[12]

Plans in effect on January 1, 1974, may elect to have the Internal Revenue Code provisions relating to participation, vesting, funding, and form of benefit apply to plan years beginning before the otherwise applicable effective date and all plan years thereafter. The election is to be made by the plan administrator and is to be irrevocable.

The provisions of the bill defining governmental plan, church plan, multiemployer plan, and plan administrator are to be effective on the date of enactment.

The provision of the bill establishing enrollment procedures for actuaries is to become effective upon enactment. The provisions relating to filing actuarial reports are to become effective at the same time as the general provisions relating to the new minimum funding rules.

Revenue effect

It appears clear that the new funding provisions will give rise to additional income tax deductions by employers in the immediate years ahead. However, the statistical data available do not provide any method for determining the size of this revenue effect. It is believed, however, that it will not represent a large revenue loss. In the longer run, it appears unlikely that the greater immediate funding expected under this bill will have any appreciable effect on revenues. Although funding occurs earlier under the bill than under present law, the income tax deductions taken by employers under the bill would for the most part ultimately be taken under the present funding rules.

D. Administration and Enforcement

(Secs. 1041, 1051, and 1052 of the bill, and secs. 7476 and 7802 of the Code)

Your committee's bill relies heavily on the tax laws in order to secure compliance with the new requirements that it imposes on employee pension, profit-sharing and stock bonus plans. The bill, in providing new standards of coverage, vesting, and funding continues the administration of these provisions in the Internal Revenue Service.

Many aspects of compliance have been discussed in conjunction with the various substantative provisions described in the bill. This includes, for example, the new excise taxes imposed with respect to underfunding.

In a number of other ways, however, efforts have been made to improve the provisions of existing law. The provisions of this type discussed here are the new office set up in the Internal Revenue Service to administer the new standards in this bill as well as the authorization of funds to provide for this administration. In addition, the bill deals with the problem raised as to the absence under existing law of a judicial review for letters of determination as to the qualification status of plans. Procedures are also set out whereby employees can question the qualification of plans.

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[12] For statement relative to the termination of a collective bargaining agreement, see the discussion under the effective date with respect to "A. Participation" above.

1. INTERNAL REVENUE SERVICE

Present law

Under present law, the national office of the Internal Revenue Service is organized on a general activity basis rather than a tax or subject basis.[1] At the present time, there are six Assistant Commissioners of Internal Revenue in the national office whose activities are broken into the following categories: collection and taxpayer service, compliance (including auditing), inspection (internal security), planning and research, technical (rulings) and administration (housekeeping). Similarly, the field offices of the Service are organized on a similar line. Within each of these broad categories there are Service units whose jurisdictional breakdown is by subject matter under examination. For example, the Miscellaneous and Special Provisions Tax Division under the Office of Assistant Commissioner (Technical) contains an Actuarial Branch, a Pension Trust Branch and an Exempt Organization's Branch. However, various other aspects of national office employee benefit plan and tax exempt organization administration are under the Office of Assistant Commissioner, Accounts Collection and Taxpayer Service and the Office of Assistant Commissioner, Compliance.

General reasons for change

Concern has been expressed in the case of the administration of employee benefit plans (and also tax exempt organizations) as to whether the Internal Revenue Service with its primary concern with the collection of revenues is giving sufficient consideration to the purposes for which these organizations are exempt. Many believe that the present organization of the Service causes it to subordinate concern for the protection of the interests of plan participants (or the educational, charitable, etc., purposes for which the exemptions are provided).

On the other hand, the enormous growth in retirement plans during the last third of a century has proceeded largely under the tax regulations of the Internal Revenue Service. Moreover, clearly the greatest single protection for rank and file employees during this time has been the Internal Revenue Service's administration of the provision denying any special tax treatment for contributions or benefits discriminating in favor of employees who are officers, shareholders, supervisors, or highly compensated employees. The thrust of this provision is to require broader substantial participation in the plans than would be provided but for the Service's administration of the statute.

At the same time, it must be recognized that the natural tendency is for the Service to emphasize those areas that produce revenue rather than those areas primarily concerned with maintaining the integrity and carrying out the purposes of exemption provisions. Similar concern has been expressed in the past over the Service's administration of the provisions of the tax law relating to exempt organizations.

Your committee believes that in the employee benefit plan and tax exempt organization area it should be easier to emphasize the basic objectives involved if the activities relating to these plans and exempt

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[1] Reorganization Plan No. 1 of 1952 which went into effect on March 15, 1952. For a description of the present organization of the Internal Revenue Service, see Statement of Organization and Functions (C.B. 1970–1, 442).

organizations were more closely coordinated, if the activities in these areas relating to auditing, rulings, etc. whether in the field or in the national office are brought together and if the top direction for these activities also has specialized in them. For the reasons outlined, the bill establishes a separate office in the Internal Revenue Service, headed by an Assistant Commissioner for Employee Plans and Exempt Organizations to deal primarily with plans that are (or claim to be) qualified under section 401 of the code and organizations that are (or claim to be) exempt from income taxes under section 501(a) of the Code. This includes pension, profit-sharing and stock bonus trusts and plans, religious, educational, and charitable organizations and foundations as well as the various other exempt organizations described in section 501(c) of the code. Similar functional units are to be established in the various regional and/or district offices. The committee has decided to authorize funds of $70 million a year to fund this new unit in the Internal Revenue Service.

Explanation of provisions

Office of Assistant Commissioner, Employee Plans and Exempt Organizations.—The bill establishes within the Internal Revenue Service a new office of Assistant Commissioner to be known as the Office of Assistant Commissioner, Employee Plans and Exempt Organizations. This office is to have the supervision and direction of the basic activities of the Internal Revenue Service in connection with pension, etc. plans (governed by secs. 401 through 415 of the code) and tax exempt organizations (exempt from tax under sec. 501(a) of the code). The bill authorizes the prescribing of the activities this office is to be responsible for in connection with organizations exempt from tax (under sec. 501(a) of the code) and plans which receive the special tax benefits of the qualified deferred compensation provisions of the tax laws (secs. 401 through 415 of the code).

In connection with deferred compensation plans it is intended that this office will be made responsible for, among other things, the question as to the qualification of the plan and the related trust and the exemption from tax of the trust. It also is intended that question as to the deductibility of contributions to a plan, the taxability of a beneficiary of an employees' trust and the taxation of employee annuities be included in the jurisdiction of this office. In addition, it is planned that this office would have responsibility over the minimum standards relating to funding of the plan and the excise tax for underfunding, including the enrollment and reports of actuaries.

In connection with organizations exempt from tax (under sec. 501(a) of the code) it is intended that this office have the responsibilities as to an organization's exempt qualification, the taxes on unrelated business income of an organization exempt from tax, and the rules relating to the private foundation provisions of the Internal Revenue Code.

To carry out the provisions of this bill, it is intended that the principal activities referred to above will be transferred from the various Assistant Commissioners' offices to the new Office of the Assistant Commissioner (Employees Plans and Exempt Organizations). With these transfers it is intended that the Assistant Commissioner (Employee Plans and Exempt Organizations), under the direction and

supervision of the Secretary, or his delegate, will have the authority to direct national and field office policy in connection with the basic activities of the Service relating to employee plans and exempt organizations.

Authorization of appropriations.—The responsibilities and functions allocated to this new office are to be funded by separate appropriations, authorization for which is made in this bill. Presently the costs of administering the provisions of the tax law relating to exempt organizations are about $20 million and the cost of administering the provisions relating to employee plans is about $22 million. This suggests a total of $42 million, but with the new activities provided in the case of pension plans and the expanded requirements under the 1969 Act with respect to exempt organizations, it is anticipated that significantly more revenue than this will be required to carry out these functions in the future. Accordingly, the bill authorizes $20 million for the remaining portion of the fiscal year ending June 30, 1974, and $70 million for succeeding fiscal years.

Effective date

These provisions are to be effective 90 days after the date of enactment of the bill.

Revenue effect

It is believed that this provision will not have any revenue effect.

2. TAX COURT DETERMINATIONS

Present law

Plans which meet the requirements of the Internal Revenue Code (that is, are exclusively for the benefit of employees, are nondiscriminatory in regard to coverage and benefits, do not engage in prohibited self-dealing transactions and meet certain other qualifications) receive special tax treatment designed to foster their growth. It is not necessary, in order to receive this special tax treatment, that a prior determination be obtained from the Internal Revenue Service as to the qualification of a plan. However, to assist employers in their development of plans or plan amendments, the Internal Revenue Service issues determination letters indicating whether or not proposed plans or amendments qualify for the special tax treatment. As a practical matter, since taxpayers generally want assurance in advance that their plans or amendments will qualify, in most cases they obtain prior determinations from the Internal Revenue Service when adopting a plan or modification. Such a determination relates to the qualification of the plan (sec. 401 of the code) and the tax-exempt status of the related trust (sec. 501 of the code).

Under the Internal Revenue Service's published procedures, this generally takes the form of a determination letter issued by a district director. The district director may request technical advice from the national office on issues arising from a request for a determination letter. Also, the applicant may request national office consideration of the matter if the district director does not act within 30 days from notice of intent to make such a request, or acts adversely.

Standards are set as to the type of situation in which the national office will entertain a request for consideration of a case. It will, for

example, consider a case where the contemplated district office action is in conflict with a determination made in a similar case in the same, or another district. The procedure provides for a conference in the national office, if it is requested by the applicant.

General reasons for change

In most cases an employer is ultimately able to obtain national office consideration of a request for a determination by means of a request for technical advice by a district director or by appeal to the national office of a district director's determination or failure to make a determination. In some cases, the Service has refused to make a determination with respect to the status of a plan and related trust. In either case, however, the employer has exhausted his remedies after the action by the national office.

As a practical matter, there is no effective appeal from a Service determination (or refusal to make a determination) that a proposed pension plan fails to qualify for the special tax benefits. In these cases, although there may be a real controversy between the employer and the Service, present law permits the employer to go to court only after he has made contributions to the plan, deducted them, and had those deductions disallowed. The long time period and the related uncertainty, coupled with the threat of the ultimate loss of the tax deduction, almost always causes the employer to go along with the Service, even if he disagrees with the Service's position. In addition the determination letter procedure does not permit employees, or their unions, to question the qualification of plans.

Your committee believes that both employers and employees should have a right to court adjudication in the situations described above. The bill deals with the problem by providing that, in the event of an unfavorable determination (or failure to make a determination), the employer may ask the Tax Court for a declaratory judgment as to the status of a new plan, a plan amendment or a plan to be terminated. In addition, your committee has decided that interested employees should be allowed to participate in the consideration by the Service of an employer's request for a determination and any controversy connected with it. An employee who intervenes in the Service's determination procedure is to be entitled to receive a copy of the determination issued by the Service in connection with the proceeding. If the employee questions a Service determination with respect to the qualification of a particular plan, he may petition the Tax Court to issue a declaratory judgment as to the status of the plan.

Your committee believes that this procedure is desirable because it will permit all interested parties to the controversy (the Government, the plan administrator, the employer, and his employees) to have an opportunity to participate in the administrative determination of the matter and to have an opportunity to contest the Service determination of the matter.[2]

While the committee decision permits employers and their employees to petition the Tax Court for a declaratory judgment in connection

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[2] The present Service procedure provides that appeals from a district director are to be considered by the national office in Washington, D.C., and as a result, if a party wishes to make an oral presentation, he must incur the cost of travel. The Service has instituted a regional appeals procedure in connection with the status of an organization exempt by reason of section 501(c)(3) and it is hoped that the Service will be able to institute a similar appeals procedure for employee benefit plan determinations.

with a new plan, a plan amendment, or a plan termination, the committee also expects the Service to establish procedures whereby interested parties (including employees regardless of whether they are plan participants or plan beneficiaries) may question the continued qualification of a plan and a related trust and obtain a determination from the Service. In such a case, it is believed that the Service should afford the employer and other interested parties an opportunity to be heard before issuing a determination letter with respect to the plan and related trust. If the Service ultimately concludes that a plan is no longer qualified, then the Service is to proceed in the usual manner by notice of deficiency.

While this new declaratory judgment procedure is being made available to parties who desire to use it, there is no requirement that a party use this new procedure to determine the status of a plan. Further, there is no requirement, as a condition for qualification, that a request for a determination be made.

Explanation of provisions

In general.—The bill provides that the United States Tax Court is to have jurisdiction in the case of an actual controversy involving a determination by the Internal Revenue Service with respect to the initial qualification or continuing qualification of a retirement plan. This applies to pension, profit-sharing, and stock bonus plans (described in sec. 401(a)), annuity plans (described in sec. 403(a)), and bond purchase plans (described in sec. 405(a)).

In order to satisfy the Tax Court that an actual controversy exists, an employer will have to place the plan into effect prior to the time that he petitions the Tax Court for a declaratory judgment. However, a new plan is to be treated as in effect even if it includes a provision that the funds contributed to it by the employer and employee may be refunded in the event that the plan is found not to be a qualified plan. If the contributions are refunded, all deductions for contributions would be disallowed and all income derived by the trust would be includable in income by the person who receives the payment. In the case of a plan amendment or plan termination, the action by the employer or plan trustee also may be put into effect on a conditional basis. Since the special tax benefits provided by the tax law are provided as an incentive to employers to adopt plans which provide for broad coverage of employees and protection of participants and beneficiaries, these individuals are to be treated as interested parties (under regulations prescribed by the Secretary or his delegate), and thus may petition the Tax Court to declare that the plan as constituted does not satisfy the requirements of the tax law designed to protect the employees and their beneficiaries as intended by Congress. For example, a participant under a plan would be entitled to bring an action if he alleges that the vesting provisions under the plan do not satisfy the minimum vesting requirements of the tax law (sec. 411), and thus the plan is not entitled to the tax benefits provided for qualified plans unless the plan is amended to satisfy the minimum vesting requirements. Similarly, such an action might be brought with regard to the antidiscrimination, the participation and coverage, or other requirements of current law or as added by this bill.

The Tax Court is to have jurisdiction to make a declaration with respect to the initial or continuing qualification of such an employee retirement plan only with respect to a new plan, a plan amendment, or a plan termination. Any such declaration is to have theforce and effect of a final judgment or decree and is to be reviewable as such. The court is to base its determination upon the reasons provided by the Internal Revenue Service in its notice to the party making the request for a determination, or based upon any new matter which the Service may wish to introduce at the time of the trial. The Tax Court judgment, however, is to be based upon a redetermination of the Internal Revenue Service determination and not on a general examination of the provisions of the plan or related trust. The burden of proof rules are to be developed by the Tax Court under its rule-making powers.

The judgment of the Tax Court in a declaratory judgment proceeding is to be binding upon the parties to the case based upon the facts as presented to the court in the case for the year or years involved. This, of course, does not foreclose future action (within the limits of the legal doctrines of estoppel and stare decisis) if an examination of the operations of a plan indicates that the plan does not in operation meet the requirements for qualification.

Procedure.—It is anticipated that the normal rules of the Federal courts as they relate to declaratory judgments are to be applicable under the Tax Court declaratory judgment procedure. For this purpose, however, the filing of any pleading by a petitioner may be held to be premature, unless the petitioner establishes to the satisfaction of the Tax Court that he has complied with the requirements prescribed under regulations by the Secretary of the Treaury providing for notice to interested parties that a Tax Court declaratory judgment proceeding is being initiated. It is anticipated that the Treasury regulations will provide that a party requesting a determination letter with respect to the qualification or continuing qualification of an employee retirement plan must give notice to parties in interest at the time of the request for the determination in order to apply to the Tax Court for a declaratory judgment with respect to such a request for a determination.

Exhaustion of administrative remedies required.—For a petitioner to receive a declaratory judgment from the Tax Court under this provision, he must demonstrate to the court that he has exhausted all administrative remedies which are available to him within the Internal Revenue Service. Thus, in the case of an employer, or a plan administrators he must demonstrate that he has made a request to the Internal Revenue Service for a determination and that the Internal Revenue Service has either failed to act, or has acted adversely to him, and that he has appealed any adverse determination by a district office to the national office of the Internal Revenue Service, or has requested or obtained through the district director technical advice of the national office. To exhaust his administrative remedies a party must satisfy all procedural requirements of the Service. For example, the Service may decline to make a determination if an employer fails to supply the Service with the necessary information on which to make a determination. In addition, the Service should decline to make a

determination if it is not satisfied that the employer has taken reasonable steps to notify all employees who might have an interest in the action on request for a determination.

A petitioner is not to be deemed to have exhausted his administrative remedies in cases where there is a failure by the Internal Revenue Service to make a determination before the expiration of 270 days after the request for such a determination to be made. Once this 270-day period has elapsed, a petitioner who has exhausted his remedies may bring an action even though there has been no notice of determination from the Internal Revenue Service.

No petition to the Tax Court may be filed after 90 days from the date on which the Secretary or his delegate sends notice to a person of his determination (including refusals to make determinations) as to the qualification of the plan. This notice is to be sent to the person requesting the determination and to any other person who has participated under the Internal Revenue Service regulations in the administrative determination of the qualifications of the plan.

While the Service presently does not provide any procedure for employee objection to proposed determinations concerning the qualification of a plan, it is anticipated that the Service will adopt procedures similar to those procedures provided for employers making the request for the determination. These procedures would permit employees who have an interest in the requirements necessary for the plan to qualify to participate in the administrative determination of whether a plan is entitled to qualified status. An employee must exhaust these remedies before petitioning the Tax Court for a declaratory judgment. If there has been a failure to provide an employee with adequate notice of a request for a determination, then he need only exhaust those administrative remedies that are available to him at the time he receives adequate notice.

Tax Court Commissioners.—In order to provide the Court with flexibility in carrying out this provision, the bill authorizes the Chief Judge of the Tax Court to assign the Commissioners of the Tax Court to hear and make determinations with respect to petitions for a declaratory judgment, subject to such conditions and review as the Court may provide.

Effective date

The amendments providing for petitioning of the Tax Court to issue declaratory judgments are to take effect on January 1, 1978.

Revenue effect

It is not believed that this provision will have any revenue effect.

E. Limitations on Contributions and Benefits

(Secs. 2001 and 2003 of the bill and secs. 72, 401, 404, 415, 1379, and 4972 of the Code)

Present law

Under present law generally, if an employer maintains a funded plan which does not meet the requirements for qualifications under the Internal Revenue Code, no deduction is allowed for contributions to the plan by the employer until the rights of the employees on

whose behalf the contributions are made are no longer subject to a substantial risk of forfeiture (and then only if separate accounts are maintained for the employees) or are actually paid. At that time, a deduction generally is allowed the employer, but the employee then must take the contributions into his income. Also the earnings on these contributions are not tax exempt. In comparison with the nonqualified plan, under the qualified plan the employer may receive a deduction for contributions to the plan, the earnings on the contributions are tax exempt, and the employees generally do not have to take the contributions into income until benefits are actually distributed to them.

Under present law, different rules are provided for employer and employee contributions in the case of qualified plans for self-employed individuals (H.R. 10 plans), plans of "regular" corporations, and plans of electing small business corporations (subchapter S).[1] These are described below.

H.R. 10 plans.—The amount of annual deductible contributions to an H.R. 10 plan on behalf of a self-employed person cannot exceed the lesser of 10 percent of his earned income [2] or $2,500 (sec. 404(e)). In addition, nondeductible contributions may be made in certain cases, but these contributions on behalf of owner-employees may not exceed the lesser of 10 percent of earned income or $2,500. Allowable voluntary contributions of employees of owner-employees must be at least proportionate to allowable voluntary contributions for owner-employees (sec. 401(e)(1)(B)(ii)).

"*Regular*" *corporate plans.*—In the case of a "regular" corporate plan (except as discussed in footnote 1) there are no limitations on the benefits an employee can derive from a qualified plan. There are, however, limitations on the amount of the contribution that is deductible. Different limitations apply to profit-sharing and stock bonus plans and to pension plans. All those limitations are based on the aggregate covered payroll rather than being on an employee-by-employee basis.

In the case of profit-sharing or stock bonus plans, the amount of the contribution that is allowable as a deduction is not to exceed in the aggregate 15 percent of compensation to employees covered under the plan. Contributions in excess of the 15-percent limitation may be carried over to future years. In addition, within certain limits, to the extent that an employer does not make the full 15-percent contribution in one year he may increase the amount of his deductible contribution in a future year.

In the case of pension plans, the amount of the contribution that is deductible is not to exceed 5 percent of the compensation to employees covered under the plan, plus the amount of the contribution in excess of 5 percent of compensation to the extent necessary to fund normal pension costs and remaining past service costs of all employees under the plan as a level amount or as a level percent of compensation over the average remaining future service of plan participants. In the al-

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[1] All the types of plans must, in addition to the rules described below, meet the general reasonable compensation tests (sec. 162). The statute does not specify limitations on the benefits which may be paid under a qualified pension plan. However, in Rev. Rul. 72–3, 1972-1 CB. 105 the Internal Revenue Service ruled that pension benefits from a qualified pension plan are intended as a substitute for compensation, and that in general a plan which provides benefits in excess of an employee's compensation is therefore not qualified.

[2] "Earned income" is generally defined as being equivalent to "net earnings from self-employment"—the kind of income that may be subject to self-employment taxes in lieu of FICA taxes (sec. 401(c)(2)).

ternative, the taxpayer may compute the limit on his deductible contributions by limiting his deduction to his normal cost for the plan plus 10 percent of the past service cost of the plan (sec. 404(a)). In practice, these limitations have very little effect in limiting the size of contributions to regular corporate pension plans.

Where an employer contributes to two or more retirement plans which are governed by different limits on deductions (pension or employee's annuities on the one hand, and profit-sharing or stock bonus, on the other hand), the total amount annually deductible under the plans cannot be more than 25 percent of compensation otherwise earned by the plan beneficiaries. If any excess is contributed, it may be deducted in the following year; the maximum deduction in the following year (for carryover and current contributions together) is 30 percent of compensation. A carryover is available for additional excess contributions which are deductible in the succeeding taxable years in order of time.

Subchapter S plans.—The limitations on the deductibility of contributions to a subchapter S corporation plan are the same as those in "regular" corporate plans. However, a shareholder-employee (an employee who owns more than 5 percent of the outstanding stock of the corporation) must include in his gross income the amount by which the deductible contributions paid on his behalf exceed the lesser of 10 percent of his compensation or $2,500 (sec. 1379(b)).

Professional corporations.—Generally, lawyers, doctors, accountants and certain other professional groups in the past have been unable to carry on their professions through the form of corporations because of the personal nature of their responsibility or liability for the work performed for a client or patient. Consequently, their contributions to retirement plans were limited by the rules governing self-employed persons. In recent years, however, all States have adopted special incorporation laws which provide for what are generally known as "professional corporations." These have been used increasingly by groups of professional persons, primarily to obtain the more favorable tax treatment for pensions generally available to corporate employees. The Treasury Department, in the so-called Kintner regulations, held that professional corporations were not taxable as corporations. A number of court cases, however, have overturned the regulations and the Service has now acquiesced and generally recognizes these professional corporations as corporations for income tax purposes.

General reasons for change

Many self-employed people, especially professionals, feel that they are discriminated against as compared with corporate executives and proprietary employees of corporations in regard to the tax treatment of retirement savings. This is because, at present, there is no comprehensive limit on the amounts the corporate employer can provide under a qualified plan on behalf of its executives and proprietary employees. Self-employed persons, on the other hand, are subject to the contribution limits described above.

In addition, many of the self-employed argue that, as a result of these contribution limits, it is difficult for them to provide adequately for their retirement, particularly as many professionals have a limited number of years of peak earnings, in which it is comparatively

easy to set something aside. It is also argued that the $2,500 limit is no longer appropriate, since in the approximately 10 years since H.R. 10 was first enacted, there has been a substantial inflation factor in the economy. Furthermore, it is contended that the present law in the retirement plan area creates an artificial incentive for the incorporation of businesses which more traditionally, and perhaps more appropriately, have been conducted in unincorporated form. For all of these reasons, the committee believes that a substantial increase in deductible contributions for self-employed individuals is justified at the present time. Under the bill, the present limits would generally be increased to 15 percent of earned income, up to a maximum deduction of $7,500 per annum.

At the same time that some individuals have been questioning the relatively low level of tax deductible contributions for H.R. 10 plans, others have questioned the wisdom of permitting virtually unlimited pension benefits in corporate plans to be funded out of tax-free dollars.

Your committee recognizes the importance of tax incentives in creating a strong private pension system. At the same time, however, your committee believes it is appropriate to provide some limitations to prevent the accumulation of corporate pensions out of tax-sheltered dollars which are swollen completely out of proportion to the reasonable needs of individuals for a dignified level of retirement income. Moreover, by imposing limitations on corporate plans, and liberalizing the limitations which are imposed under present law on H.R. 10 plans, the bill takes a long step forward to achieving tax equity in this area. Thus, the bill provides, in general, that a qualified trust may not provide a defined benefit in excess of $75,000 a year, or 100 percent of the employee's average high-3 years of compensation (whichever is less) and that contributions to a qualified money purchase pension plan, profit-sharing plan or stock-bonus plan may not exceed $25,000 a year, or 25 percent of the employee's annual compensation (whichever is less). These provisions do not limit the size of the pension which the employee may receive from a non qualified plan, which is financed out of taxed dollars. The only effect of the provisions is to limit the size of the pension which is subsidized by the tax laws.

Explanation of provisions

1. *H.R. 10 plans—in general.*—The bill increases the maximum deductible contribution on behalf of self-employed persons to the lesser of $7,500, or 15 percent of earned income. (A similar, although not identical, rule is applied in the case of defined benefit pension plans.) However, no more than the first $100,000 of earned income may be taken into account in applying the percentage limits. The $100,000 ceiling on the earned income rate base means that a self-employed person (or a shareholder employee in a subchapter S corporation) with more than $100,000 income will have to contribute at a rate of at least 7½ percent on behalf of his employees if he wishes to take the full $7,500 deduction on his own behalf (in order to comply with the antidiscrimination requirements).[3] A self-employed person

[3] The limitations on nondeductible contributions on behalf of owner-employees in a self-employed plan are not increased, however.

earning more than $100,000 who wishes to contribute $5,000 for himself will have to contribute at least 5 percent on behalf of his employees.

For purposes of these rules a self-employed person is allowed only one $100,000 contribution base, no matter how many plans he may establish for a trade or business. For example, a self-employed person with $200,000 of earned income could not cover himself under two plans, each of which also covered half of his employees, and use up his $7,500 limit by contributing at a rate of 3.75 percent under both plans; in other words, contributions for all employees would have to be at a 7.5 percent rate, if the self-employed individual was to be allowed to make a $7,500 deductible contribution on his own behalf.

The committee bill also contains a provision to permit self-employed individuals to set aside up to $750 a year out of earned income as a deductible contribution, even though it exceeds the otherwise applicable percentage limitation (15 percent of earned income). This provision will enable certain organizations of the self-employed, such as the Jockeys' Guild, to set up retirement plans for their members without having to confront complex record-keeping and administrative problems, and will also allow any self-employed individual who wishes to do so to save for his retirement, even though his earned income in a particular year is relatively low.

Subchapter S corporations.—Since Subchapter S corporations are not subject to normal corporate tax, and the stockholders of the corporation are taxed generally like self-employed partners. Your committee believes it is appropriate to retain section 1379 in the Code. However, the bill raises the limitations on contributions for Subchapter S stockholders to the same substantially increased deductible amounts (15 percent of earned income, or $7,500) which are allowed under the bill for self-employed individuals.

Defined benefit plans for the self-employed.—Under present law, most self-employed plans are defined contribution plans because of the limitations on contributions imposed on self-employed persons under present law. Your committee believes that the option of having defined benefit plans should be available to the self-employed and shareholder-employees of Subchapter S corporations. Accordingly, the bill provides that the Secretary or his delegate is to prescribe regulations which will allow self-employed plans (or plans benefiting shareholder-employees of a Subchapter S corporation), in effect, to translate the 15 percent-$7,500 limitation on contributions, to which they would otherwise be subject, into limitations on benefits which they could receive under a defined benefit plan. The bill also provides certain "guideline regulations" which the Secretary must follow in carrying out the purposes of the bill.

A defined benefit plan which follows the guideline regulations is to be subject to the limits on deductions for corporate defined benefit plans rather than the 15 percent-$7,500 limitation.

Under the formula provided in the bill, the basic benefit for the employee (that is, a straight life annuity commencing at the later of age 65 or 5 years from the time the participant's current period of participation began, with no ancillary benefits and assuming no employee

contributions) is not to exceed the amount of the employee's compensation [4] which is covered under the plan (up to a maximum of $50,000) times the percentage shown on the following table.

Age at participation	*Percentage*
30 or less	6.5
35	5.4
40	4.4
45	3.6
50	3.0
55	2.5
60 or over	2.0

The percentages in early years are higher to reflect the fact that contributions made during these time periods earn interest for a longer period prior to retirement than contributions made in later years. Thus, for purposes of applying the table, past service credits are not to be considered in determining at what age a self-employed individual's period of participation in the plan began. The Secretary or his delegate is to have authority to prescribe regulations in cases of plans which provide something other than the "basic benefit." Also, the regulations are to specify percentages for individuals who become participants at ages between those shown on the table. In addition, the Secretary or his delegate is given authority to prescribe new percentages, to be used in years beginning after December 31, 1977, based on changes in money rates and mortality tables occurring after 1973.

To illustrate how this formula would work, assume that a self-employed person enters a defined benefit plan at age 30, and participates in the plan for 5 years, with income covered under the plan of $20,000 per annum. At age 35, he leaves the plan, but at age 50, he again becomes a participant. For the first 5 years his covered income is $30,000 per year, then $40,000 for the next 5 years, and finally $50,000 for the last five years prior to his retirement.

The calculation would work as follows:

Age	Compensation per year	Rate	Benefit earned per year	Total benefit
30–35	$20,000	6.5	$1,300	$6,500
50–55	30,000	3.0	900	4,500
55–60	40,000	3.0	1,200	6,000
0–65	50,000	3.0	1,500	7,500
Total				24,500

Thus, the maximum benefit which could be paid to the individual under the plan in the form of a single life annuity commencing at age 65 with no ancillary benefits would be $24,500 per year.

In order to receive the maximum benefit accrual rate under the formula in a later period, a self-employed individual might establish a plan for himself at an early age, but with a very low rate of accrual, or a very low compensation base on which the benefit accrual was measured. Thus, his employees during this period would only receive a low-

[4] In the case of a self-employed individual the term "compensation" means earned income; in the case of a shareholder-employee the term means the amounts received as compensation from the Subchapter S corporation.

benefit accrual. Later, when some of these employees had departed, the self-employed individual might seek to raise the rate of accrual. To prevent this sort of abuse situation, the bill requires that the regulations must provide that any increase in the rate of accrual or the compensation base [5] under the plan, would be treated, only with respect to such increase, as beginning a new period of participation for the self-employed individual. For example, assume that a plan was established by an individual at age 30, which provided for a 6.5 percent rate of accrual, but that the compensation base under the plan was only $10,000. Then, at age 40, the individual wishes to increase the annual benefit accrual to the maximum permissible amount. This would be computed by taking 6.5 percent of the first $10,000 of compensation, and 4.4 percent (the maximum rate of accrual for a self-employed individual who enters a plan at age 40) of additional compensation up to the $50,000 ceiling, for a total accrual of $2,410 per year for an individual having at least $50,000 of compensation.

The committee bill also provides that for purposes of the antidiscrimination rules, the maximum amount of compensation which is to be taken into account is to be $100,000. (This is the same ceiling provided in connection with contributions to a money purchase plan.) For example, if a self-employed person established a defined benefit plan for himself at age 50 (where a 3 percent rate would apply) and earned $100,000 per year, benefits under the plan for his employees could be earned at the rate of 1.5 percent of covered compensation, and the plan would not be considered to be discriminatory. In other words, the maximum benefit which could accrue per year for the self-employed person would be 3 percent of $50,000, or $1,500, which is equivalent to 1.5 percent on a $100,000 base. Thus, the self-employed person would be permitted to make contributions which would purchase a 1.5 percent benefit for his employees. However, even if the self-employed person's earnings were $200,000, benefits earned for the employees under the plan could not drop below the 1.5 percent rate.

A plan which covers owner-employees may not take advantage of the regulations authorized in this provision, unless it provides benefits for all participants under the plan on a nonintegrated basis.

In order to assure reasonable comparability between defined benefit and defined contributions and combination of plans, the regulations are to provide for appropriate adjustments in the allowable amount of deductible contributions, or permissible rate of benefit accruals in cases where the same self-employed individual is a participant in two or more plans. For example, a $3,750 contribution to a money purchase pension plan (for an employee whose earnings is at least $50,000) has the effect of reducing the maximum allowable rate of accrual under a defined benefit plan by one-half. In addition, a change in the rate of accrual by reason of this rule is to be treated as a new period of participation for purposes of determining the maximum rate of accrual under the table provided for defined benefit plans.

For purposes of the above rules, all plans of a controlled group of partnerships (within the meaning of secs. 414(c) and 415(h) of the code) are to be aggregated for purposes of the limitations.

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[5] Of course, an increase in the amount of compensation earned by the self-employed individual would not trigger a new period of participation.

Excess contributions.—Under present law, if excess contributions are made on behalf of an owner-employee, these must be repaid with the earnings thereon within 6 months after the mailing of notice by the Internal Revenue Service; otherwise the plan will become disqualified with respect to that individual. In the case of an excess contribution which is willfully made, the plan will become disqualified with respect to the owner-employee, and he is barred from participating in a qualified plan for the 5 succeeding years. In contrast a shareholder-employee who is subject to the same deduction limits need not repay the excess contributions but must take those amounts into income.

This rule can work a hardship in cases where a relatively minor violation of the excess contribution rules could result in a complete disqualification of the plan with respect to an owner-employee. Moreover, the present rules will not work well in the context of a defined benefit plan, because it is difficult, if not impossible, to trace particular contributions to benefit accruals under the plan for particular employees. For these reasons, the bill repeals the provisions of present law outlined above.

At the same time, it is clear that there must be some rule to discourage excess contributions in order to prevent the tax-free accumulation of earnings on contributions in excess of those permitted under the law. Since the major abuse of overfunding is that it permits the tax-free accumulation of the earnings on the excess contribution, your committee's bill imposes an excise tax of 6 percent on excess contributions to plans for the self-employed. The tax is to be paid by the employer who maintains the plan.

In the case of a defined contribution plan (for example, a money purchase pension plan), excess contributions include amounts contributed by the employer in excess of the 15 percent of earned income, or $7,500 deduction limits on contributions on behalf of self-employed persons. In the case of a defined benefit plan, the tax is imposed where the plan is fully funded at the close of the employer's taxable year, and is imposed upon the amount that has not been deductible for the taxable year or any prior taxable year (i.e., the amount of the carryovers). Also, in either type of plan, excess contributions include voluntary contributions by owner-employees in excess of the allowable amount of such contributions. As under present law, voluntary contributions on behalf of owner-employees may not exceed the lesser of 10 percent of earned income, or $2,500. Moreover, allowable voluntary contributions under the plan for employees other than owner-employees must be at least proportionate to allowable voluntary contributions for owner-employees. As under present law, excess contributions do not include amounts which are allocable under regulations to the purchase of life, health or accident insurance.

In the case of a plan funded through level premium insurance payments, the employer may contribute an amount based on an average of the allowable deductible contributions for an owner-employee for the three immediately preceding taxable years without triggering the tax on excess contributions, even though this amount is in excess of the deductible contribution which can be made for that employee for the taxable year in question. However, any such amounts will be treated as part of the owner-employee's distributable share of the partnership

income for income tax purposes and as a voluntary contribution by the owner-employee for purposes of the excise tax on overfunding.

To encourage plans to repay the amount of any excess contributions (and in recognition of the cumulative advantages of excess contributions), the committee bill provides that the excise tax is to be cumulative. For example, assume that an employer made a contribution of $15,000 on behalf of an owner-employee in a year in which only a $5,000 contribution was allowable as a deduction. An excise tax of $600 would be imposed for that year.[6] If, in the following year no amounts were contributed to or repaid from the plan, but an additional deductible contribution of $5,000 were allowable for that year, an excise tax of $300 would be imposed ($10,000 minus the $5,000 deductible contribution allowable for year two, equals $5,000, times 6 percent, equals $300).

Regulations will provide for the situation where there are two or more plans benefiting the same self-employed individual, or where there are two or more partnerships or proprietorships under common control.

Premature distributions.—Under present law, in general, where amounts are distributed under a qualified plan to an owner-employee before he attains age 59½, section 72 provides that the tax imposed on such amounts shall be not less than 110 percent of the amount of the increase in his taxes due to the distribution. Where the premature distribution exceeds $2,500, then, for purposes of computing the penalty, it is averaged over the current year and the four preceding years.

The purpose of the provisions allowing a deduction for contributions to a qualified retirement plan is to allow money to be set aside on a tax-sheltered basis for retirement purposes. Where the retirement plan contributions are withdrawn prior to the retirement years, this purpose is frustrated. The committee therefore believes that there should be a substantial deterrent to prevent an owner-employee from treating his retirement plan as a tax-free savings account which he can withdraw prior to retirement.

The provisions of present law do not fully serve this purpose. The amount of the penalty varies depending on the taxpayer's marginal rate of tax on his other income during the year in which he receives the premature distribution. Also, present law affords an opportunity for the owner-employee to minimize the penalty by arranging to receive the premature distribution in a year in which his other income is low, or his deductions are high.

To remedy this situation, the bill repeals the penalty provisions of present law and imposes instead an income tax of 10 percent on the amount of the premature distributions. This is in addition to any other income taxes payable on this distribution, and would not be offset by any tax credits (other than the refundable credits for overwithholding, overpayment of tax, and the gasoline tax credit). Also, this tax would not be treated as reducing the individual's tax liability under the minimum tax provisions.

As under present law, the penalty tax would not apply in the case of a distribution due to death or disability.

[6] In a plan which permits voluntary contributions by owner-employees, the plan might treat part of excess employer contributions as a voluntary contribution, as under present law, thus reducing the tax on overfunding. However, under these circumstances, owner-employees would have to take the amount of the voluntary contribution into income.

Withdrawing of voluntary contributions by owner-employees.—Under present law, amounts received from a retirement plan before retirement are tax free to all participants other than owner-employees to the extent of all nondeductible contributions made to the plan by the participants. Thus, all participants other than owner-employees may, if the plan permits it, withdraw their voluntary contributions prior to retirement. The bill extends this same treatment to owner-employees.

Time for making contributions.—Under present law, contributions to a self-employed plan must be made by the end of the taxable year in order to be deductible for that year. Often this can create difficulties for the self-employed person, who may not have at hand all the information necessary for him to determine how much he is permitted to contribute on his own behalf. In order to meet this problem, the bill provides that tax deductible contributions of self-employed plans (and all other qualified plans) may be made at any time up to the point when the Federal income tax return (corporate or individual, as the case may be) for that year is due (including any extension). This rule should provide the additional time necessary for the individuals involved to make the required calculations and determine the amount of the maximum deductible contribution which is permitted for the taxable year in question.

2. *Overall limitation—in general.*—As part of the process of moving toward parity in the tax treatment of corporate plans and H.R. 10 plans, the committee bill contains provisions imposing overall limitations on the contributions and benefits which are allowable under qualified plans and retirement accounts and annuities which receive favorable tax treatment.[7] This overall limitation must be satisfied in order for the favorable tax benefits under the plan, annuity, or account to be retained. H.R. 10 plans and plans of Subchapter S corporations are also subject to these rules.

Plans to which limitation applies.—The overall limitation applies to a trust which is part of a pension, profit-sharing, or stock bonus plan (described in sec. 401(a)), an annuity contract (described in sec. 403(b)), an employee annuity (described in sec. 404(a)(2)), and an individual retirement account or annuity (described in sec. 408).

Defined benefit plans—limitation on benefits.—Under the committee bill, in general, the highest annual benefit which can be paid out of a defined benefit plan to a participant is equal to the lesser of (1) $75,000, or (2) 100 percent of the participant's average compensation from the employer during his highest 3 consecutive calendar years of aggregate earnings during the period he was an active participant in the plan[8] (or his average compensation during the period of his participation in the plan if this was less than 3 years) Compensation for this purpose includes the participant's earnings from his employment and includes bonuses and other taxable payments except for deferred compensations, stock options, and other distributions which receive special tax benefits.

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[7] Nothing in the committee bill would prevent the payment of any amount of compensation or pension benefits on a nontax-sheltered basis, subject only to the rules of section 162 that in order for the employer to receive a deduction, compensation paid to employees must be reasonable, and the rules of section 404(a)(5) dealing with contributions to nonqualified trusts.

[8] If the individual was an employee of several corporations in a controlled group, his earnings from all members of the group would be aggregated for purposes of these rules.

The 100-percent limitation is simply a clarification of present law. The Internal Revenue Service has ruled that a pension is essentially a substitute for earning power during the retirement years (Rev. Rul. 72–3, 1972–1 C.B. 105). Your committee agrees with this interpretation and believes that no qualified pension plan should pay benefits which are higher than an employee's average earnings during his highest 3 years. The committee also believes that it is desirable to impose some dollar limitations on the size of a pension which may be paid out of tax-sheltered dollars and the $75,000 limitation which is imposed under the bill is generous enough to afford a reasonable standard of living.

To prevent the erosion of the value of an employee's pension due to inflation, the committee bill permits a qualified defined benefit plan, in accordance with regulations, to provide a cost-of-living adjustment for employees who have retired or terminated their service under the plan, over and above the 100 percent limitation or the $75,000 limitation. The adjustment to the $75,000 and the 100 percent ceilings will be provided annually by the Secretary or his delegate to reflect cost-of-living increases.

The procedures used in the regulations will be similar to those used in adjusting the old age and survivor's benefits under the social security law (but without regard to the timing or amount of any increase specifically authorized by action of the Congress).

Benefits paid in the event of early retirement would not have to be scaled down from the 100 percent of salary level on an actuarial basis. However, the $75,000 limitation must be scaled down in the event of early retirement prior to age 55, but not below $10,000. In general, the benefits payable under a defined benefit pension plan would not have to be reduced for pre-retirement ancillary benefits, such as medical, death, and disability. Only post-retirement ancillary benefits which are directly connected with the retirement benefit need be taken into account in computing the limitations. Thus, for example, the value of an annuity paying a sum certain, a post-retirement death benefit or a guaranteed payment for a period of years would be an ancillary benefit which needs to be taken into account.

Your committee believes that it is socially desirable to encourage joint and survivorship benefits. Accordingly, it has concluded that no adjustment should be made for the provision of such a benefit for the participant and his spouse to the extent that the benefit payable to the survivor is not greater than the benefit which would be payable if both the participant and his spouse were alive. To be a joint and survivors annuity, the benefit payable to the survivor must be for the full life of the survivor.

In the case of a contributory plan, upward adjustments in the benefit schedule would be permitted in accordance with regulations, to reflect the fact that part of the annuity had been purchased with the employee's own after-tax dollars.

The committee expects that all of these adjustments will be substantially equivalent to the adjustments now provided under present law for a plan which is integrated with social security.

As a further adjustment, the defined benefit otherwise allowable in accordance with the rules described above is to be reduced by

multiplying the otherwise allowable benefit by a fraction, the numerator of which is the employee's years (or part thereof) of service with the employer and the denominator of which is 10. For example, if an individual who had 3 years of service had an average high-three years salary of $50,000 (and no other adjustments were required) his maximum benefit could not exceed 3/10ths of $50,000, or $15,000 per annum. This prevents a situation where an individual might receive an extremely high pension, even though he had only a few years of active service under a plan.

The purpose of providing an overall limitation is to prevent the accumulation of excessive pension benefits out of tax-free dollars. But the committee sees no useful purpose to cutting back on the benefits of the average working man who has a relatively limited amount of income. Accordingly, the bill specifically provides that notwithstanding the 100-percent limitation, or the required adjustments for certain ancillary benefits, a qualified defined benefit plan (or plans) of the employer may pay an annual retirement benefit of up to $10,000 per annum to any employee who has not been a participant in any defined contribution plan of the employer.

Defined contribution plans.—Under present law, there is no limitation on the amount which may be contributed to an employee's retirement account under a corporate defined contribution plan, although the employer may not, in any one year, deduct contributions in excess of 15 percent of the aggregate compensation paid to employees covered under a profit-sharing plan, or 25 percent of the aggregate compensation paid to employees under a combination profit-sharing and pension plan (except in the case of carryovers, where the present limit is 30 percent).

The committee bill retains these rules (with certain modifications, as discussed below). But the committee believes it is also appropriate to impose limitations on the annual additions which can be made to an individual employee's account under a defined contribution plan in order to achieve some measure of comparability with the limitations imposed under the bill on the benefits which may be paid under a defined benefit plan. For purposes of these rules, defined contribution plans include profit-sharing and stock bonus plans, as well as money purchase pension plans and target benefit plans.

Under the committee bill, the annual additions to an employee's account under a qualified plan or plans of the employer may not exceed the lesser of (1) $25,000, or (2) 25 percent of the individual's compensation from the employer during the year. The term "annual additions" means (1) the employer's contributions under the plan, (2) the lesser of one-half of all the employee's contributions or all the employee contributions in excess of 6-percent of compensation, and (3) any forfeitures which are added to the employee's account during the year.[9] For purposes of these rules, only a portion of the employee contributions is counted because the employee receives only one of the two tax advantages generally associated with contributions to a qualified plan—deferral of the taxes on the earn-

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[9] The term "year" will be defined in regulations. Generally, in cases where there is only one plan, the "year" will be the plan year. In cases where there is more than one plan involved, the regulations will set forth the criteria for determining the relevant year.

ings on the contributions—but does not receive a tax deduction for the amount of the contribution when it is made. The option of excluding the first 6 percent of employee contributions recognizes the fact that many plans provide for small amounts of employee contributions and it would greatly increase the complexity of the provision if small amounts of contributions for which there were relatively small tax advantages had to be taken into account. The $25,000 limitation will be adjusted annually for the cost of living in accordance with regulations in the same manner as the $75,000 limitation.

As previously indicated, under present law the contributions allowable as a deduction in a combination profit-sharing and pension plan may not exceed 25 percent of the aggregate compensation to employees covered under the plan. However, where excess contributions are made, these may be carried forward and deducted in succeeding years, and the deduction limitation for those years is increased from 25 to 30 percent. The committee bill modifies this result by continuing to allow the carryover, but providing that the ceiling on deductible contributions remains at 25 percent.

In addition, under present law, in the case of a profit-sharing plan alone, the limitation on deductible contributions is 15 percent of the aggregate compensation paid to employees covered under the plan. In cases where the employer fails to utilize his full 15 percent allowance. the unused portion may be carried forward and used in succeeding years, up to 30 percent of aggregate compensation limit for the taxable year. The bill provides that the carryover of unused contribution limits in this case may not result in a situation where the employer could deduct more than 25 percent of aggregate covered employee compensation for the year.

Combination plans.—Where a corporation has 2 or more plans, or 2 or more different types of plans, the limitations, of course, must operate as an overall ceiling on the maximum benefit the employee can obtain under all the plans. Otherwise, it would be possible to escape the limitations by the simple device of establishing as many plans as were needed to provide the benefits desired. Additionally, rules are needed where an employee is employed by two or more related corporations of the same employer, some of whom have separate retirement plans. In such a case the committee bill provides that all the plans are to be subject to the overall ceiling. The overall ceiling would be computed, in general, by aggregating similar plans (defined contribution or defined benefit) and reducing the limitation on one type by the benefits or contributions of the other.

For purposes of these rules, all of the defined benefit plans of an employer (whether or not terminated) are treated as one plan, and all of the defined contribution plans (whether or not terminated) are treated as one plan. If an employer maintains a defined benefit and a defined contribution plan each plan would be subject to the limit; in addition the two plans must be combined in computing the overall limitation.

To achieve this purpose, the bill establishes a formula (to be applied each year by each employee) under which a defined benefit plan fraction for the year is added to a defined contribution

plan fraction. If the sum of these fractions exceeds 1.4, then one or more of the plans will be disqualified. Of course, the employer is free to adjust either the benefits accruing under the defined benefit plan or the annual additions to a defined contribution plan for particular employees to prevent this from happening. The committee anticipates that many plans will include "fail safe" provisions, which automatically freeze either the rate of benefit accrual, or the amount of annual additions, to a level necessary to prevent the overall limitation from being exceeded for any employee. A plan is to be permitted to contain such a provision without violating the requirement that a qualified plan must provide for fixed and determinable benefits.

The numerator of the defined benefit plan fraction is the "projected benefit" of the participant under the plan determined as of the close of the year and the denominator is the maximum benefit which would be permitted under the plan under the limitations established in the bill. For purposes of computing the projected benefit, it is assumed that the participant's compensation for all future years will equal his compensation during the year in question. It is assumed that all other relevant factors considered in computing the benefit, such as provisions of the plan, social security benefit levels, and cost-of-living will remain constant as of that year.

The numerator of the defined contribution plan fraction is the total amount of annual additions to the participant's account through the close of the year in question and the denominator of this fraction is the maximum amount of additions which could have been made for that participant, under the provisions of the committee's bill for the year in question and all prior years of service with that employer.[10]

For example, assume that an employee is employed at age 40 and immediately becomes a participant in a defined benefit plan which accrues a benefit annually equal to 2 percent of his high three years of compensation (adjusted for the cost-of-living). His annual rate of compensation is $150,000. At age 45, he becomes a participant in a defined contribution plan of his employer.

In the case of this employee, his projected benefit under the defined benefit plan, assuming he works until the normal retirement age of 65, would equal 50 percent of his average high three years of compensation or $75,000. Since $75,000 is the maximum amount of the annual benefit which is payable from a qualified plan under the provisions of the committee bill (assuming no increase in the cost-of-living) contributions could be made for the employee under the defined contribu-

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[10] In order to prevent a situation where a plan in existence before the effective date of the provisions might start off under these provisions with a deficit, the committee bill provides that for purpose of the defined contribution plan fraction, additions to the account prior to January 1, 1976, will be treated as not being in excess of the additions which would have been allowable for those years under the provisions of the committee bill.

Since many defined contribution plans permit employees to make "catch-up" contributions to take into account the fact that an employee did not make the maximum contribution for a past year, the computations necessary to compute the defined contribution fraction as of January 1, 1976, may be made on a cumulative basis. In recognition of the fact that plans may have to be amended to satisfy these new limitations and that existing plans often permit 10-percent employee contributions on a cumulative basis, the bill provides that employee contributions are not to be taken into account if made prior to January 1, 1976, if not in excess of the maximum amount of contributions permissible under the plan as in effect on October 2, 1973, to the extent that the contributions are 10 percent (or less) of the employee's salary, computed on a cumulative basis. The maximum amount of contributions permissible under the plan as in effect on October 2, 1973, is intended to include the maximum amount of contributions permissible under amendments to a plan approved by the Internal Revenue Service before October 2, 1973, and actually put into effect before the end of the year 1973.

tion plan, if the defined contribution fraction did not exceed four-tenths.

Assuming that the defined benefit plan were amended to provide that future accruals would equal 1 percent of compensation (or $1,500 per year in the case of this employee), his projected benefit under the defined benefit plan would then equal $45,000, 30 percent of his high three years of compensation (which equals 60 percent of his $75,000 limitation). This would mean that 80 percent of his overall limitation could be provided under the defined contribution plan.

For purposes of these rules, plans of all corporations, partnerships, or proprietorships which are under common control will be aggegated. Generally, the question of common control will be determined under sec. 1563(a) of the Code (and secs. 414(b) and (c) of the Code), except that a 50-percent control test will be applied for purposes of these rules, instead of the 80-percent test imposed under that section. Also to be aggregated are any sec. 403(b) annuity plans or individual retirement accounts (established under the provisions of this bill) in which the individual is a participant. For purposes of these rules, the participant will be treated as having 100 percent control of these plans. For example, a sole proprietor maintaining an H.R. 10 plan for himself who is also a participant in a section 403(b) plan would aggregate the two plans as he has control over both plans.

In the event of a merger between two employers of the same employee, the overall limitation is not less than the aggregate benefits he has already accrued under the plans of both employers if there was no common control before the merger. In other words, the employee will not be forced to give up benefits he has already earned prior to the merger.

If it is determined upon application of the bill formula that the limitations contained in the bill have been exceeded, then the determination as to which plan or plans must be disqualified will be made by the Internal Revenue Service in accordance with regulations. The regulations are to provide that no terminated plan may be disqualified until all other plans have been disqualified (since there might be no recovery of taxes in the case of plans which had terminated in a year for which the statute of limitations had already run). Also, to prevent undue hardship, the regulations are to provide that plans still in existence generally are to be disqualified on a basis which will affect the fewest number of employees.

Additional benefits.—The bill contains a provision which makes it clear that benefits or contributions in addition to those allowable in connection with qualified plans may be paid or accrued on behalf of an employee, so long as this is not done on a tax deferred basis. For example, an employer would be free to provide additional defined benefits under a so-called "pay as you go" plan, which means, in general, that the benefits are paid by the employer as they fall due, and the plan is not funded. Here, the employer would receive his deduction at the time when the employee was required to take the benefits into income.

Similarly, the employer would be free to make defined contributions into a taxable trust or bank account on behalf of the employee and these amounts could be set aside for pension purposes. However, the employer would not be entitled to a deduction (except as provided in

sec. 404(a)(5)) until the employee's rights to these amounts are no longer subject to a substantial risk of forfeiture at which time the employee would be required to take them into income.

Special rule where records are not available.—In the case of existing plans, it may be that the employer will not have adequate records to determine the amount of additions which have been made for his employees under a defined contribution plan. Likewise, the employer may have no way to determine the amount of additions which would have been allowable for his employees under the provisions of the committee bill, had those provisions been in effect for the years in question. Accordingly, the Secretary or his delegate is authorized to prescribe regulations establishing reasonable assumptions which may be used by the employer in determining the amount of additions and allowable additions for years prior to the effective date of these provisions.

Likewise, in the case of plans which may be established in the future, the employer will be aware that no contributions or additions have been made on behalf of his employee, but may not have adequate records to establish the amounts of allowable additions which could have been made. Thus, the Secretary or his delegate is authorized to establish reasonable assumptions which may be used by the employer

Effective dates and transition rules

In general, the amendments with respect to H.R. 10 plans, including the provisions increasing the amount of the deductible contributions which may be made on behalf of the self-employed, are to apply to taxable years beginning after December 31, 1973. However, the rules facilitating the use of defined benefit plans for the self-employed, as well as the rules modifying the treatment of excess contributions under H.R. 10 plans and the rules with respect to the taxation of premature distributions, are to apply to taxable years beginning after December 31, 1975.

The new rules with respect to corporate limitations will apply to contributions made or benefits accrued in years beginning after December 31, 1975.

However, the committee was concerned that the limitations imposed on the bill should not have the effect of cutting back the pension of anyone under the provisions of an existing plan. Accordingly, the bill contains a transition rule for any individual who is, on October 2, 1973, an active participant in a defined benefit plan. Under the terms of this provision, an employee may receive an annual benefit which does not exceed 100 percent of the individual's annual rate of compensation on October 2, 1973 (including bonuses whether or not they were taken into account in the base for benefits under the plan as in effect on that date). However, the benefit may not exceed the annual benefit which would have been payable to the participant on retirement if all the terms and conditions of the plan in effect on October 2, 1973, (without regard to any amendments to the plan actually adopted after that date even though such amendments may, for other purposes, be given retroactive effect) had remained in effect until the employee's retirement, and his compensation taken into account under the plan for any period after October 2, 1973, had not exceeded his annual compensation on that date.

If the plan provides for a postretirement cost of living adjustment on October 2, 1973, such an adjustment may also be taken into consideration in determining the allowable benefits for a participant under the "grandfather" provision. Any future increases in the bill's basic benefit limitation under the bill's cost of living adjustment provision, however, are applicable only to the generally applicable limits and not to the limits under the transitional "grandfather" clause. As a result, in future years many individuals are likely to elect to use the regular benefit limits despite the fact that they are eligible to use the "grandfather" provision, because the adjusted regular limits may permit a higher allowable benefit limit.

Individuals who wish to use these transitional provisions must elect to do so in a time and manner to be prescribed under regulations. Generally, the election will be made by the plan administrator in the year in which the employee retires. Once made, the election will be irrevocable.

Revenue effect

By increasing the maximum amount that self-employed persons will be allowed to deduct as contributions to H.R. 10 plans to 15 percent of earned income up to $7,500 a year, a revenue loss is estimated that will amount to $175 million annually. A revenue gain of $10 million is estimated to be the result of the provision that applies certain limitations on the contributions and benefits under retirement plans. The net result of these two provisions that are designed to equalize tax treatment for pension plans is a revenue loss of $165 million. These estimates assume 1973 levels of income and employment.

F. Employee Savings for Retirement

1. INDIVIDUAL RETIREMENT ACCOUNTS (SEC. 2902 OF THE BILL AND SECS. 219, 402, 408, 409, 4973, 4974, AND 6693 OF THE CODE)

Present Law

Generally, an employee is not allowed a deduction for amounts contributed from his own funds to a retirement plan. While an employer's qualified plan may allow employees to contribute their own funds to the plan,[1] no deduction is allowed for these contributions (except to the extent that tax excludable contributions made in connection with salary reduction plans may be viewed as employee contributions). However, the income earned on employee contributions to an employer's qualified plan is not taxed until it is distributed.[2]

General reasons for change

While in the case of many millions of employees, provision is made for their retirement out of tax-free dollars by their participation in qualified retirement plans, many other employees do not have the opportunity to participate in qualified plans. Often, plans are not avail-

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[1] Generally, if the plan allows it, employees may make voluntary contributions to a qualified retirement plan of up to 10 percent of compensation. I.R.S. Publication 778, p. 14 (Feb., 1972).

[2] At one time, Congress took the position that a contribution to an H.R. 10 plan on behalf of a self-employed person was made half by the employer and half by the self-employed person: no deduction was allowed for half of the contributions (presumably, that half "contributed by" the self-employed person). This limitation (sec. 404(a)(10)) was repealed for taxable years after December 31, 1967.

able because an employer is not willing to incur the costs of contributing to a retirement plan since, in general, the employer contributes funds which are in addition to the compensation otherwise paid his employees. Employees who are not covered under a qualified plan are disadvantaged by the fact that earnings on their retirement savings are subject to tax, and grow more slowly than the tax-sheltered earnings on contributions to a qualified plan.

Your committee's bill deals with this problem by making available a special deduction for amounts set aside for retirement by employees who are not covered under a qualified plan (including an H.R. 10 plan), a government plan, or a tax exempt organization annuity plan (sec. 403(b)). Individuals in this status, in computing their income tax, will be permitted to deduct up to $1,500 a year or 20 percent of compensation, whichever is less, for contributions to an individual retirement account. The earnings on this amount will also be tax free. As in the case of H.R. 10 plans, the amounts set aside plus the earnings are to become taxable to the individual generally after he has reached retirement age, when he receives benefits from the account.

Explanation of provisions

In general.—Under your committee's bill, a retirement savings deduction is to be allowed individuals for contributions to an individual retirement account, an individual retirement annuity, or a qualified retirement bond. The maximum annual deduction is to be $1,500, or 20 percent of compensation, whichever is less. Amounts allowed as a retirement savings deduction are to be deductible from gross income (instead of from adjusted gross income) so that any taxpayer, even a taxpayer who does not itemize but uses the standard deduction, is to be allowed a retirement savings deduction. In this manner, this program will be available to the widest possible group of taxpayers. Individual retirement accounts may be established by individuals, by employers for the benefit of their employees, and by labor unions for the benefit of their members. This will widen the availability of the retirement savings deduction.

If nondeductible contributions are erroneously made to an individual retirement account during the year (*e.g.*, because contributions are larger than the amount deductible), the individual generally will be able to withdraw the excess contribution without penalty. If the excess contribution is not withdrawn, generally it is to be subject to a nondeductible 6 percent excise tax in each year in which it remains in the individual retirement account.

Except in the case of excess contributions, amounts generally are to be withdrawn from an individual retirement account only after reaching retirement age. To encourage an individual to retain these amounts for retirement, the bill generally imposes a penalty tax of 10 percent of the amount received on premature distributions occurring before age 59½ or disability. Upon reaching age 59½, however, a participant may withdraw his funds even if he continues to work. In addition, the bill generally requires that funds in a retirement account are to be withdrawn from the account starting no later than the year in which the participant reaches age 70½. If insufficient withdrawals occur from that time on, a nondeductible excise tax is to be imposed on the excess accumulation that should have been withdrawn.

Generally, all amounts received from an individual retirement account will be taxed in full as ordinary income, since neither the contributions nor the earnings thereon will have been subject to tax previously. No capital gains or special lump-sum distribution rules are to apply to receipts from these accounts. However, the individual may use the general five-year averaging provisions (sec. 1301).

Your committee recognizes that individuals may wish to change the assets in which their contributions are invested. To facilitate this, the bill allows a limited tax-free "rollover" between individual retirement accounts. Also, a tax-free rollover is allowed from qualified plans to an individual retirement account.

Deduction for contributions to individual retirement account, etc.—Under the bill, an eligible individual is to be allowed a maximum retirement savings deduction of up to $1,500 per year or 20 percent of compensation includible in gross income, whichever is less, for contributions to an individual retirement account, individual retirement annuity or qualified retirement bond. Your committee intends that, for this purpose, compensation generally is to include only compensation for personal services, and is not to include earnings from property (such as interest and dividends). Additionally, since self-employed persons are to be allowed the retirement savings deduction (if they do not participate in an H.R. 10 plan), compensation includes earned income (as defined in sec. 401(c)(2)). If the individual's compensation is not includible in his gross income (*e.g.*, as income earned from sources outside the United States) it is not to be treated as compensation for purposes of the retirement savings deduction.

The retirement savings deduction is to be available to each eligible individual. Consequently, an individual's marital status and whether he or she files a joint tax return will not affect contributions for the retirement savings deduction. If both husband and wife are eligible, they can each make contributions to his or her own individual retirement account, etc., and each is to be eligible for a deduction of up to $1,500 (or $3,000 total on a joint return). In addition, the bill also provides that community property laws of a State or other jurisdiction are not to apply with respect to the retirement savings deduction. For example, if husband and wife live in a community property State and the husband earns $7,500, the husband may contribute up to $1,500 (20 percent of $7,500) to an individual retirement account, etc., even though half of the income is owned by the wife under State law. Also, if the husband earns $15,000 and his wife earns no income, only $1,500 may be contributed and deducted by the husband under the retirement savings deduction and no contribution may be made by his wife.

The retirement savings deduction is to be allowed as a deduction from gross income.

For an individual to be allowed a retirement savings deduction, contributions are to be made to an individual retirement account, etc., within the taxable year for which the deduction is claimed. Thus, if a taxpayer is on a calendar year, contributions are to be made no later than December 31 of the year for which he wishes to take a deduction.[3]

[3] If, at the end of the year, he is not sure of the total amount that he can deduct, the individual can make a slightly larger contribution than otherwise allowable, and will have until the time for filing his tax return for that year to withdraw the excess without penalty.

Contributions must be made in cash (currency, checks, etc.), and contributions in property are not to be deductible.

Deduction not allowed for active participants in qualified, etc., plans.—Your committee intends that the deduction for retirement savings (and contributions to individual retirement accounts, etc.) generally is to be available only where an individual does not participate in any other tax-supported retirement plan. Therefore, the retirement savings deduction is to be allowed an individual only if he is not an active participant in a qualified plan (sec. 401(a)), a qualified annuity plan (sec. 403(a)), a qualified bond purchase plan (sec. 405), a government plan, or a section 403(b) annuity at any time during the taxable year for which the deduction is claimed.[4]

Generally, for purposes of the retirement savings deduction, an employee is to be considered an active participant in a plan if, for the year in question, benefits are accrued under the plan on his behalf (as in a defined benefit pension plan), the employer is obligated to contribute to the plan on the employee's behalf (as in a money purchase pension plan), and the employer would have been obligated to contribute to the plan on the employee's behalf if any contributions were made to the plan (as in a profit-sharing plan). An individual is to be considered an active participant in a plan if he is accruing benefits under the plan even if he only has forfeitable rights to those benefits. Otherwise, if an individual were able to, *e.g.*, accrue benefits under a qualified plan and also make contributions to an individual retirement account, when he later becomes vested in the accrued benefits he would receive tax-supported retirement benefits for the same year both from the qualified plan and the retirement savings deduction. However, to avoid substantial administrative problems, if an individual becomes a participant in a plan and under that plan is given past service credit for prior years of service with the employer, he will not be considered to have been an active participant in the plan in the years for which the past service credit is given.

An individual generally is not to be considered to be an active participant in a plan after he has separated from service with a vested interest in the plan. Also, an individual is not to be considered an active participant in a plan after his employer has completely terminated contributions under the plan, even though the trust continues to provide benefits for the individual.

For purposes of the retirement savings deduction, a government plan is a plan established by the Federal Government or a State (including the District of Columbia) or local government (or an agency or instrumentality of the same) for its employees. For example, the Federal Civil Service Retirement Plan is a government plan. However, Social Security and Railroad Retirement plans are not to be considered government plans. Even if a government plan is not tax qualified, an individual who is an active participant in the plan is not to be able to participate in an individual retirement account, etc.

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[4] An individual who is an active participant in a tax-exempt organization annuity plan (sec. 403(b)) is not to be entitled to a retirement savings deduction. An individual is to be considered an active participant in a section 403(b) annuity plan even if, during the period in question, his rights under the annuity contract are forfeitable. Consequently, if contributions are made on behalf of an individual under a section 403(b) annuity contract in anticipation that his rights will later be nonforfeitable, he cannot make contributions to an individual retirement account, etc., and he is not to be entitled to the retirement savings deduction for the taxable year in question.

If an employee is given the option to elect not to be covered by a qualified, etc., plan and he so elects, generally he will not be treated as being an active participant in the plan for purposes of the retirement savings deduction. For example, if an employer offers a qualified plan that requires matching employee contributions, but the employee elects not to participate in the plan, he is not to be considered as an active participant in the plan. However, where an employee who opts out of a qualified plan can elect later to become an active participant in it and can receive benefits for all prior years (for which he opted out) upon payment of, *e.g.*, all mandatory contributions plus interest for the prior periods, the employee is to be treated as being an active participant in the plan for the prior years with respect to which he pays the required amount and accrues benefits. Otherwise, an individual could receive a retirement savings deduction for a number of years and also, at his own discretion, later become covered by a qualified plan for the same years.

Excess contributions to individual retirement account, etc.—Under the bill, generally only deductible amounts are to be contributed to individual retirement accounts or to buy an individual retirement annuity or a qualified retirement bond, and no nondeductible employee contributions are to be made.[5] However, your committee recognizes that the contributions made on behalf of an employee to an individual retirement account, etc., may be larger than the individual's allowable retirement savings deduction. For example, an individual who has contributed to a retirement account may change jobs in mid-year and become an active participant in a qualified plan of his new employer during that year. In this case, a retirement savings deduction is not to be allowed and the contributions made to an individual retirement account will be excess contributions.

In such a case, the individual may avoid penalties on the excess contribution if he receives a timely distribution from the individual retirement account (or annuity) of the excess contribution, plus the income earned on that excess amount to the date of distribution. In general, a distribution will be timely if it is received from the account or annuity no later than the time (including extensions) for filing the employee's tax return for the year in question.[6]

If timely distribution of excess contributions (and income thereon) is made from an individual retirement account or annuity, the excess contribution that is returned is not to be included in gross income, since the taxpayer has not taken a deduction for this amount. However, any net income attributable to, and distributed with, the excess contribution is to be included in the individual's income in the year received, since it will not have been previously taxed as income to him.

Your committee believes that generally it is necessary to provide a direct incentive to avoid excess contributions to individual retirement accounts and annuities and to stimulate timely withdrawals of excess contributions.

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[5] However, as discussed below, nondeductible "rollover contributions" are to be available to individual retirement accounts in certain circumstances.

[6] The time for filing is intended to be the due date for filing the original return (plus extensions) and is not to include the time for filing amended returns. The time for distributions of excess purchases of qualified retirement bonds is slightly different, as described below.

Therefore, under the bill a nondeductible excise tax is to be imposed on contributions to individual retirement accounts and annuities in excess of the amounts deductible as retirement savings, unless these amounts (with earnings) are timely distributed from the account. This tax is to prevent the unwarranted tax deferral that would exist from income on excess contributions, and is to be 6 percent of the amount of the excess contributions. The excise tax is to be paid by the individual who made the excess contributions.

If an excess amount is contributed to an individual retirement account (or annuity) in one year and the excess is not eliminated in later years, the excise tax is to be owed on the excess amount for the year of contribution and for each successive year until the excess is eliminated. (The amount of the excess is to be determined as of the end of the individual's taxable year.) However, an individual may eliminate an excess contribution in later years if he does not take his maximum allowable deduction for retirement savings in the later years. Under the bill, if an individual takes less than the maximum amount allowed as a retirement savings deduction in any year after the excess contribution is made, the difference between the maximum allowed deduction and the amount taken is to reduce a prior excess contribution.[7]

For example, in 1975, an individual earns $7,000 and contributes $1.500 to an individual retirement account. His maximum available deduction is $1,400 (20% of $7,000), so there has been an excess contribution of $100. If he received the $100 (plus income earned thereon) by the time he files his tax return for 1975, he would not be subject to the excise tax. However, if he does not receive payment by that time, he will owe an excise tax of $6 (6 percent of $100). In 1976, he earns $7.500 and contributes $1,500 to his individual retirement account. Since there is an excess contribution in his account (as a result of the 1975 excess contribution), the individual has until the time for filing his tax return for 1976 to receive a distribution of $100 (plus income earned on the contribution) from the retirement account. If the $100 is returned by this time, the individual will not receive a deduction for 1976 for the full $1,500 (but will only receive a deduction for $1.400), and is to take into income the earnings paid out from the account in the year received. If the individual does not receive the excess contribution (plus earnings) in this manner, he is to owe a 6 percent excise tax for 1976, since at the end of that year there still will be an excess in the account attributable to the 1975 contribution. In 1977, he earns $7,500 and contributes $1.400, although he could take a maximum retirement savings deduction of $1.500. In this case, the excess contribution is to be reduced by the difference between the maximum deduction available and the deduction taken, which is $100 ($1,500 less $1.400). Consequently, the excess attributable to the 1975 contribution is to be eliminated and no excise tax is to be owed for 1977.

If the individual is no longer eligible to participate in an individual retirement account or retirement annuity, so he cannot forego a contribution to the account (or cannot withdraw part of the previous year's contribution to reduce the excess contribution), to avoid the 6 percent excise tax he may withdraw the excess contribution (subject

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[7] However, contributions less than the maximum in prior years are not to reduce the excess contribution; otherwise, the limits on contributions could be effectively circumvented.

to the 10 percent additional tax if he receives the distribution before age $59\frac{1}{2}$ or disability). The amount received in this case is to be included in full in the individual's gross income since, like all amounts in an individual retirement account, this amount will have no basis.

Your committee intends that the retirement savings deduction is to be used for retirement purposes and is not to be available for accumulating income on a tax-free basis after retirement. Therefore, under the bill, no contribution is to be made to an individual retirement account, etc., and no retirement savings deduction is to be allowed for a taxable year in which the individual becomes age $70\frac{1}{2}$ (and for any later year). This conforms to the general requirement (discussed below) that distributions must be made from an individual retirement account, etc., no later than the year in which a participant attains age $70\frac{1}{2}$. If a contribution is made for an employee who has attained age $70\frac{1}{2}$, it is to be treated as an excess contribution subject to the 6 percent excise tax.[8]

Contributions to individual retirement accounts, etc.—miscellaneous.—Under the bill, an employer (including a self-employed person) may establish an individual retirement account for the benefit of some or all of his employees and make contributions to the account on their behalf either in the form of additional compensation or a salary reduction plan. However, this is to be available only for employees who are not covered by qualified, government, or exempt-organization plans. Any employees who are not covered under such plans (including those excluded from coverage due to length of service requirements or because of age) may be covered under an employer-sponsored individual retirement account or, alternatively, may establish their own individual retirement accounts.

Amounts contributed to an individual retirement account, etc., by an employer for an employee generally are to be included in the employee's gross income as compensation, whether or not these amounts are deductible. However, if an employee pays his employer amounts out of after-tax dollars to be contributed to an individual retirement account, etc., on his behalf by the employer, this amount is not to be included in the employee's income. Amounts that constitute employee compensation and are contributed to an individual retirement account, etc., by the employer are to be subject to tax under the Federal Insurance Contributions Act (FICA) and the Federal Unemployment Tax Act (FUTA). However, these contributions are not to be subject to withholding if it is reasonable for the employer to believe at the time of contribution that the employee will be entitled to a deduction for the payment. In this regard, generally it will be reasonable for an employer to make a lower withholding only when the amount contributed to the individual retirement account, etc., is based on periodic withholding from compensation otherwise paid the employee. Otherwise, the employer generally will not be able to reasonably estimate the amounts to be contributed to the account, etc., and will not be able to base his lower withholding on the estimate of such contributions.

Since the deduction for contributions to individual retirement accounts is to be available to the self-employed as well as employees, the

[8] The contribution also may become subject to the excise tax on excess accumulations, described below.

bill will also benefit people such as jockeys, who in years of low earnings are limited in what they can contribute to an H.R. 10 plan by the 15 percentage-of-income limitation if they wish to contribute in excess of $750.

Individual retirement accounts—requirements.—Under the bill, an individual retirement account generally is to be a domestic trust created or organized by a written instrument for the exclusive benefit of an individual or his beneficiaries. The governing instrument is to provide that the trustee will not accept more than $1,500 per year on behalf of any individual, and is to provide that the individual's interest in the account is nonforfeitable, without exception.

The balance in an individual retirement account generally may be invested in any assets that are acceptable investments for a qualified plan. The account balance could, for example, be invested in insurance annuity contracts, in a savings account with a savings and loan institution or a credit union, or in stock of a mutual fund. However, account assets generally are not to be commingled with other property except in a common trust fund.

Under the bill, no assets of an individual retirement account are to be invested in life insurance contracts and the trust instrument must so provide. Thus, the account cannot purchase life insurance protection under any retirement income, endowment, or other contract which includes a life insurance element. The individual retirement account is to be used to provide retirement income and life insurance is an asset designed for a different purpose—to provide funds for survivors. In addition, the individual retirement account is to receive only amounts that are deductible under the retirement savings deduction. If life insurance protection were purchased with contributions to an individual retirement account, the amount paid for the insurance would not be deductible by the participant and an allocation would have to be made each year between the deductible and nondeductible amounts, substantially complicating the administration of an individual retirement account. Consequently, your committee believes that if life insurance protection is to be acquired, it should be done through the many other methods now available, and not through the individual retirement account.

The trust instrument also is to provide that the entire interest of a participant will be distributed by the end of the year in which he reaches 70½ or that distribution will begin by that time and (in accordance with regulations to be issued) will be distributed over the life of the participant (or lives of the participant and his spouse), or over a period of years not exceeding the life expectancy of the participant or the participant and his spouse. This is substantially the same requirement as now applies to distributions from H.R. 10 plans.

The bill also generally requires, with respect to distributions, that the trust instrument must provide that if a participant (or his surviving spouse) dies before receiving the entire interest in the account, the entire remaining interest will be distributed within five years of death or used to purchase an immediate annuity payable to the beneficiaries. This also is substantially the same requirement as now applies to distributions from H.R. 10 plans.

Under the governing instrument, the trustee of an individual retirement account generally is to be a bank (described in sec. 401(d)(1)).[9] In addition, a person who is not a bank may be a trustee if he demonstrates to the satisfaction of the Secretary of the Treasury that the way in which he will administer the trust will be consistent with the requirements of the rules governing individual retirement accounts. It is contemplated that under this provision the Secretary of the Treasury generally will require evidence from applicants of their ability to act within accepted rules of fiduciary conduct with respect to the handling of other people's money; evidence of experience and competence with respect to accounting for the interests of a large number of participants, including calculating and allocating income earned and paying out distributions to participants and beneficiaries; and evidence of other activities normally associated with the handling of retirement funds. Additionally, your committee expects that the Secretary generally will give weight to evidence that an applicant is subject to Federal or State regulation with respect to its activities, where this regulation includes, e.g., suitable rules of fiduciary conduct. It is anticipated that the Secretary probably will not allow individuals to act as trustees for individual retirement accounts.

Although the bill generally requires that a trustee administer an individual retirement account trust, the bill also provides that a custodial account may be treated as a trust, and that a custodian may hold the account assets and administer the trust. Under the bill, a custodial account may be treated as a trust if the custodian is a bank (described in sec. 401(d)(1)) or other person, if he demonstrates to the satisfaction of the Secretary of the Treasury that the manner in which he will hold the assets will be consistent with the requirements governing individual retirement accounts. Again, it is contemplated that the Secretary will require substantial evidence (as described above) to determine if a person other than a bank may act as custodian.

The bill provides that the trustee of an individual retirement account (or issuer of a retirement annuity) is to report annually to the Secretary of the Treasury regarding contributions to the account or annuity and regarding other matters as prescribed by regulations. Your committee intends that the regulations will include a requirement that the trustee or issuer file annual information returns with the Internal Revenue Service (with copies to each individual for whose benefit a retirement account or a retirement annuity is maintained) on the amount of contributions to and distributions from the account or annuity. Under the bill, there is to be a penalty of $10 for each failure to report, unless due to reasonable cause.

Individual retirement annuities—requirements.—Under the bill, retirement savings also may be invested in annuity contracts, called individual retirement annuities. An individual retirement annuity is to be an individual annuity contract that is issued by an insurance company in the name of the person who pays for the annuity (or on whose behalf payments are made). The individual's rights in the contract are to be nonforfeitable, without exception. In order to assure

[9] The bill amends section 401(d)(1) to provide that Federally insured credit unions are to be considered "banks" for purposes of determining who can be a trustee of an individual retirement account, etc.

that payments under the contract will be used for retirement, the terms of the contract are to specifically provide that it is not transferable. Similarly, it is intended that the terms of the contract will prohibit the owner of the contract from using it as security for a loan.

To conform to the limits on the retirement savings deduction, the contract also is to provide that the annual premium is not to be greater than $1,500.

Additionally, as with individual retirement accounts, it is intended that the annuity contract is not to include any life insurance element. Any refund of premiums is to be applied (before the close of the calendar year following the refund) toward payment of future premiums or toward the purchase of additional benefits, and the annuity contract is to so provide.[10]

To assure that retirement savings are used for retirement purposes, the annuity contract is to include provisions requiring distribution of the annuity beginning at the close of the year when the contract owner reaches age 70½. (This provision is similar to the analogous provision regarding individual retirement accounts and H.R. 10 plans.) Also, the contract is to include provisions with respect to distribution after the death of the contract owner (and his spouse) that are similar to the provisions to be included for individual retirement accounts.

Employer- and union-established individuals retirement accounts.— Under the bill, employers and labor unions are to be able to establish individual retirement accounts for their employees or members. In this case, the same rules that govern individual retirement accounts generally are to apply to an employer- or union-established individual retirement account. For example, the interest of the participants in the account are to be nonforfeitable without exception and the trust instrument is to so provide. Under the bill, additional requirements also are to be met by employer- and union-established individual retirement accounts.

An employer or union may establish a single individual retirement account trust for a number of employees or members. However, there is to be a separate accounting for each participant's interest in the individual retirement account, and the trust instrument is to provide for such an accounting. Although there is to be separate accounting for each of the participants, this does not mean that the contribution on behalf of each participant must be held separately from the other assets in the retirement account, but the assets of the account may be held and invested together for all participants.

Under the bill, the trust instrument of an employer- or union-established individual retirement account also is to provide that assets are to be held exclusively for the benefit of the participants or their beneficiaries. The exclusive benefit rule governing individual retirement accounts established by an employer or a union is the same rule that governs qualified plans and trusts (sec. 401), and all of the requirements that must be met under the existing exclusive benefit rules also are to be met by these individual retirement accounts. For

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[10] This applies only with respect to refunds of premiums that were deductible and, therefore, properly paid. With respect to premiums in excess of the amount deductible under the retirement savings deduction, as discussed above it is intended that the excess premiums may be repaid to the individual within the time for filing his tax return for the year in question. If no deduction was taken, no income is to be recognized on receipt of this excess premium. However, earnings on the excess premium are to be distributed along with it, and the earnings are to be reported as income in the year received.

example, under the present exclusive benefit rule, the trust instrument must make it impossible for corpus or income to be used for, or diverted to, purposes other than for the exclusive benefit of the participants or their beneficiaries; this same rule is to apply to individual retirement accounts. Additionally, the exclusive benefit rule is to apply to individual retirement account investments in the same way as it applies to qualified plan investments.

It is intended that where an employer has both a qualified plan and an employer-sponsored retirement account, the qualified plan must meet the nondiscrimination standards without regard to the individual retirement account.

Taxation of individual retirement accounts, prohibited transactions, etc.—Generally, the bill provides that an individual retirement account is to be exempt from Federal income taxation.[11] However, if the retirement account has unrelated business taxable income, it is to be subject to tax on this income under section 511 of the Internal Revenue Code. All of the rules relating to unrelated business income (including those in sec. 512 respecting unrelated business taxable income, sec. 513 respecting unrelated trade or business, and sec. 514 respecting unrelated debt-financed income) that apply for purposes of section 511 are to apply with respect to individual retirement accounts.

The bill also applies the existing prohibited transaction rules (sec. 503(b) and sec. 503(g)) to individual retirement accounts. Under the bill, if an individual engages in a prohibited transaction with his individual retirement account trust, his account is to become disqualified as of the first day of his taxable year in which the prohibited transaction occurs.[12]

With respect to an individual retirement account established by an employer or a union, if a participant in the account engages in a prohibited transaction with the individual retirement account trust, that individual's account in the trust is thereupon to be treated as a separate individual retirement account trust and this deemed separate trust is to become disqualified as of the first day of the individual's taxable year in which the prohibited transaction occurs.

For example, if an employer with 100 employees establishes an individual retirement account for all his employees and one employee violates the prohibited transaction rules by borrowing money from the retirement account trust, then the whole retirement account trust is not to be disqualified. However, that portion of the trust which constitutes the separate account of the employee who engaged in the prohibited transaction is to be disqualified. In this way, individuals will have a substantial incentive to avoid engaging in prohibited transactions, and if a prohibited transaction occurs, only the individual who engages in that transaction (or the individual who is related, *e.g.*, by marriage, to the person who engages in the transaction) will be penalized.

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[11] As with annuities geenrally, the owner of an individual retirement annuity is not to be currently taxed on the annual increased value of the annuity, but is taxed on receipt of annuity payments. Also, as with Series E bonds generally, the income earned on the qualified retirement bonds is generally not taxable until redemption (or "maturity," if earlier).

[12] The bill provides that an individual is to be treated as "creator" of the account for the purpose of applying the prohibited transaction rules. Under sections 503(b) and 503(g), certain transactions between a trust and its "creator" (and persons attributed to the creator) are prohibited.

If an individual retirement account is disqualified, the participant is then to be taxed as if he had received a distribution (on the first day of his taxable year in which the prohibited transaction occurred) of the fair market value of all the assets in his account. Since his basis in his account is to be zero, the entire amount received will be ordinary income. In addition, if the deemed distribution occurs before the individual is age $59\frac{1}{2}$ or disabled, the 10 percent additional tax (described below) on premature distributions is to apply. (Otherwise, a participant who wanted a premature distribution would have an incentive to engage in a prohibited transaction.) The individual is to be taxed currently on all income earned in his account after the disqualification occurs, since the account will cease being an individual retirement account.

With respect to individual retirement annuities (which are nontransferable and cannot be hypothecated), the bill prohibits the owner of the contract from borrowing money from the insurance company issuing the contract, under or by use of the contract. If any prohibited borrowing occurs (regardless of the amount involved) the contract is to lose its qualification as an individual retirement annuity as of the first day of the taxable year of the contract owner in which the borrowing occurs. In this case, the owner is to include in income for that year the fair market value (which may not be the same as the cash surrender value) of the contract as of the first day of that year. Since the owner's basis in the contract is to be zero, the entire amount deemed distributed is to be taxable to him as ordinary income. In addition, the 10 percent additional tax (described below) on premature distributions may apply to this deemed distribution. (If the annuity contract is sold, exchanged or hypothecated, in violation of its terms, it is intended that the same consequences will occur as with a prohibited borrowing from an insurance company.)

An employer who maintains an individual retirement account also is not to engage in prohibited transactions (as defined in sec. 503(b) and 503(g)) with the retirement account. Otherwise, the employer—who may have substantial control over the trust—would be able to engage in dealings with the trust to the detriment of the employees who participate in it. Therefore, the bill also treats the employer as the creator of an individual retirement account trust which he maintains for purposes of the prohibited transaction rules.

Your committee believes that it would be inappropriate for a prohibited transaction involving the employer, or persons attributable to the employer (and not involving any account participant),[13] to result in a penalty to any participant. Consequently, the bill provides that if an employer (or persons related to him) engages in a prohibited transaction with a retirement account maintained by him, the employer is to lose all deductions for compensation to the extent of the contributions to the retirement account in his taxable year in which the prohibited transaction occurs, and for all prior open years.

For example, if the employer contributed to the account (under a salary reduction type plan) $10,000 in each of 1975, 1976, and 1977 and if he engaged in a prohibited transaction in 1977, his deduction for the $10,000 contribution in 1975, the $10,000 contribution in 1976,

[13] Where the employer is also a participant (such as a self-employed person who participates in the account), the consequences attendant upon "employer" status are to occur.

and the $10,000 contribution in 1977 would be disallowed (if all these years were open). No deduction for these amounts would be allowed under any provision of the Internal Revenue Code (including but not limited to sec. 162).[14]

Distributions from individual retirement accounts, etc.—Generally, the proceeds from an individual retirement account (individual retirement annuity and qualified retirement bond) are to be fully taxable to the individual when distributed. Since contributions to the account, etc., will be made with tax-free dollars and income of the account, etc., will not be taxed as earned, the individual's basis in the account, etc., is to be zero.

The amounts distributed from a retirement account, etc., are not to be eligible for capital gains treatment, and the special averaging rules applicable to lump-sum distributions (under sec. 72) also are not to be available. This should encourage the individual to take down the amounts ratably over the period of his retirement. However, the individual is to be permitted to use the general averaging rules (sec. 1301).

If an individual borrows money, using his interest in the account as security, the portion used as security is to be treated as a distribution from the account to the individual. This treatment is also consistent with your committee's intention to encourage retirement savings since in this case if the employee uses his account as security for a loan he has no funds left for retirement.

For purposes of the estate and gift taxes, the amounts in individual retirement accounts, individual retirement annuities, and qualified retirement bonds are not to be excluded from tax (secs. 2039(c) and 2517). This too is consistent with your committee's intention that the funds be used during the individual's retirement period.

If an annuity contract is distributed from an individual retirement account, it is not to be included in income when received if the annuity contract generally meets the rules governing individual retirement annuities. In this case, the participant essentially will have received an individual retirement annuity contract and all the individual retirement annuity rules (including those with relation to borrowing under or by use of the contract) are to apply to the distributed contract.

Your committee intends that savings accumulated through an individual retirement account, etc., are to be used for retirement purposes and should not be distributed before the participant reaches age 59½ or is disabled; [15] this follows present law governing H.R. 10 plans. Under the bill, if there is a premature distribution, the individual's income tax otherwise due is to be increased by 10 percent of the total amount of the premature distribution that is included in his gross income for the taxable year. For example, if an unmarried individual

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[14] Where contributions are made to an employer-established individual retirement account both by the employer and individual participants, the employer is to lose deductions for compensation paid in open years to the extent of the total contributions to the account in those years. For example, in 1975, the employer makes $2,500 of contributions to the individual retirement account which he maintains and the employer engages in a prohibited transaction with the trust in that year. Also in 1975 individual participants contribute $2,500 to the individual retirement account. In 1975 the employer pays more than $5,000 of compensation to his employees. For 1975, the penalty on the employer for engaging in the prohibited transaction is a disallowance of $5,000 of deductions for compensation paid.

[15] Disability is to be determined under the same rules that apply to H.R. 10 plans (sec. 72(m)(2)).

with taxable income (after all exemptions and deductions) of $20,000 receives a premature distribution of $3,000, his income tax for the year of receipt would be $6.690 ($5,230 on $20.000 of taxable income, plus $1.160 on the $3,000 premature distribution, plus a $300 penalty tax on the premature distribution).

The 10-percent additional tax is to apply to any premature "deemed distribution" that occurs on account of a prohibited transaction involving a retirement account or retirement annuity.

The 10-percent additional tax generally is not to be offset by any tax credits (other than the refundable credits for overwithholding, overpayment of tax, and the gasoline tax credit). Also, this tax is not to be treated as reducing the individual's tax liability under the minimum tax provisions (sec. 56).

The 10-percent penalty tax on premature distributions is not to apply in the event of death or disability. However, your committee expects that the Internal Revenue Service will require that the custodian must receive proof of disability if making distributions under the disability provision. Generally it is intended that the proof be the same as where the individual applies for disability payments under social security.

(The 10-percent penalty tax also is not to apply to a distribution of excess contributions made within the time for filing the individual's tax return for the year in which the excess contributions occur.)

Your committee also intends that the amounts contributed to an individual retirement account are to be used for retirement purposes, and are not to be retained in the account, beyond the maximum age for payout. If sufficient payments are not timely made from the retirement account (or retirement annuity), then an excise tax is to be imposed on the amount of the under-distribution.[16] The payments needed to avoid this excise tax are to be provided by regulations and are to follow the rules (described above) with respect to payment no later than the year in which the participant attains age 70½ (or payment on the death of a participant or his spouse). If the amount paid out is less than the minimum required, there is to be a nondeductible 50 percent excise tax on the difference between the minimum payout required for the year in question and the amount actually paid out. The tax is to be paid by the individual to whom the minimum payments should have been made. For example, if the minimum annual amount that is to be distributed from a retirement account is $100, and only $60 is distributed by the end of the taxable year (of the payee), then an excise tax of $20 (50 percent of $40) is to be paid by the payee.

Tax-free rollovers.—To permit flexibility with respect to the investment of an individual retirement account, the bill provides that money or property may be distributed from an individual retirement account to the person for whose benefit the account is maintained without payment of tax, provided this same money or property is reinvested by the individual within 60 days in another qualifying individual retirement account maintained for this benefit. Rollover transfers to an individual retirement account are, of course, subject to the same limits and rules as other individual retirement accounts (such as, the rules relating to premature distributions or prohibited transactions). The trans-

[16] As discussed below, slightly different rules apply to the qualified retirement bonds.

fer may be desired because the individual desires to shift his investments, for example, from, or to, an annuity contract, a mutual fund, or a savings account.[17]

Before releasing the account, the committee anticipates that the trustee will be required by the Internal Revenue Service to receive a declaration of intention from the individual as to the proposed reinvestment (except in the case of an individual who was entitled to receive a distribution because of his retirement at age 59½, or because of disability). The custodian is also to be required to notify the Service that a distribution of assets from the account had been made and the reason for making the distribution.

Also, since annual contributions to an individual retirement account cannot be larger than $1,500 except for rollover contributions, it is expected that the trustee who receives a rollover contribution will require a declaration from the individual that the payment is a rollover contribution.

If property other than money is received as a distribution, to be eligible for the tax-free rollover, the same property received is to be contributed to the retirement account. For example, if an individual receives stock in a distribution from a qualified plan, the same stock that is received is to be contributed to the individual retirement account, to avoid taxation on the original distribution.

The bill also allows a tax-free rollover from a qualified plan to an individual retirement account. In this case, the plan participant would have to receive his entire interest in the plan and the distribution would have to occur on account of his separation from service and within one taxable year to qualify for a tax-free rollover.

In the case of a tax-free rollover from a qualified plan, the amount contributed to an individual retirement account is to be the same amount of money (or the same property) received from the qualified plan less the amount considered contributed to the qualified plan by the individual as an employee contribution. (The amount of contribution to an individual retirement account is to be reduced by the amount of employee contributions because all amounts in the retirement account are to have a zero basis, and it would be inappropriate to apply this zero basis rule to employee contributions.)

As with a rollover between individual retirement accounts, the same property (other than money) received from a qualified trust is to be contributed to the retirement account. However, in this case, the fair market value of the property contributed is to be no greater than the total value of the rollover contributions which can be made to the individual retirement account. For example, if an individual receives securities worth $5,000 and cash of $5,000 from a qualified plan, and $5,000 of this amount represents employee contributions, then all of the securities are to be contributed to the retirement account to qualify for the tax-free rollover.

If the rollover contributions to a retirement account are greater than the amount allowed, then the 6 percent excise tax is to apply to the excess contributions.

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[17] Amounts cannot be rolled over to an individual retirement account from a disqualified (through prohibited transactions, etc.) retirement account (or disqualified retirement annuity). Similarly, excess contributions to a retirement account, etc. cannot be rolled over.

To prevent too much shifting of investments under this provision, the bill provides that an individual can transfer amounts between individual retirement accounts only once every three years. However, he may rollover amounts received from a qualified plan to an individual retirement account within that three year period.

Qualified retirement bonds.—In addition to the various types of investment described above in which deductible employee retirement savings can be placed, the bill also provides that these amounts may be invested annually in a special retirement bond, to be issued by the Federal Government. The bonds are to be issued under the Second Liberty Bond Act and are to provide for the accumulation of interest until the time of redemption.

The bonds are to be issued in the name of the individual on whose behalf they are purchased for retirement (the "registered owner") and are not to be transferable, under any circumstances, except to his executor in the event of his death (or to a trustee for his benefit in the event he becomes incompetent to manage his own affairs). For example, the bonds could not be pledged for the payment of debts, and could not be assigned to a trustee in bankruptcy. Also, the bonds could not be awarded to the individual's spouse as a result of a divorce settlement. As with other investments made through the retirement savings deduction, the employee's right in these bonds are to be nonforfeitable, without exception.

In conformity with the general provisions for individual retirement accounts and retirement annuities, the bill provides that the bonds generally are only to be cashed after the individual has reached the age of 59½ years, or if he becomes disabled. If he dies, the bonds could be redeemed by his estate. There would be one further exception to cover the case of an individual who purchased the bonds, believing that he would be eligible for the deduction for that year, only to discover later that he was not eligible. For example, an individual might purchase the bond early in the year, and later become a participant under a qualified retirement plan sponsored by his employer. To meet this situation, the bill provides that the bond may be redeemed at any time within 12 months of its purchase without penalty (and without payment of interest).[18] This provision could also be used by individuals who purchased the bond, but discovered within a year that they needed the money for other purposes. In this case the Internal Revenue Service is to be notified that the bond has been redeemed and, therefore, would be on notice that no deduction would be allowed because of its purchase. Consistent with the general rules for individual retirement accounts and retirement annuities, the bill provides that the bonds are to cease to bear interest when the individual reaches age 70½. In addition, during that year the individual is also required to take any of these bonds he is still holding into income, even if he does not cash them in. It is anticipated that these rules will be set forth on the face or back of the bonds.

Also, for similar reasons, the bill provides that if the registered owner dies before age 70½ or before the bonds are cashed in, the bonds

[18] If the bond was not cashed within the 12 months grace period, the individual would still not receive the deduction, in those cases where he was not eligible for it. However, when he cashed in the bond at a retirement age, the proceeds of the bond would constitute income to him (since his basis in the bond would be zero under the bill).

are to cease to bear interest five years after the death of the registered owner or when the registered owner would have attained age 70½, whichever is earlier.

When the bonds are redeemed, the full proceeds of the bonds, including any interest earned on them, is to be treated as ordinary income to the individual, whose basis in the bonds would be zero.[19] However, if the individual chose to do so, he could treat this income under the general averaging provisions of the tax law (sec. 1301).

As noted above, if the bond is redeemed within 12 months after the date of its issuance, the proceeds would not be included in gross income if no deduction is allowed on the purchase of the bond.

Effective date

The deduction for retirement savings is to be available for taxable years beginning after December 31, 1973. All other provisions with regard to the individual retirement account, etc. are to take effect on January 1, 1974.

Revenue effect

This provision allowing an individual not covered by a qualified retirement plan, government plan, or section 403(b) plan to deduct annually the lesser of $1,500 or 20 percent of compensation for contributions by him or on his behalf to a tax-exempt retirement account, annuity, or bond plan established by him (or to certain trusts established by employers or associations of employees) is estimated to involve a revenue loss amount to $225 million for 1974 and rising to $355 million for 1977 (at 1973 income levels).

2. SALARY REDUCTION PLANS AND OTHER MATTERS (SECS. 1015 AND 2005 OF THE BILL AND SEC. 414 OF THE CODE)

Present law

Generally, an employee is not allowed to deduct amounts which he contributes from his own funds to a retirement plan. While an employer's qualified plan may allow employees to contribute their own funds to the plan,[1] no deduction is allowed for these contributions. However, the income earned on employee contributions to an employer's qualified plan is not taxed until it is distributed.[2]

In the case of a salary reduction plan or a cash or deferred profit-sharing plan, however, the Internal Revenue Service has permitted employees to exclude from income amounts contributed by their employers to the plan, even where the source of these amounts is the employees' agreement to take salary or bonus reductions or forgo salary increases. In the case of a cash or deferred profit-sharing plan, the employee generally has the election to take a bonus currently in cash or deferred by payment into the plan. In the case of a salary

[19] The provisions of sec. 72 (relating to annuities) and sec. 1232 (relating to bonds) are not to apply to qualified retirement bonds.

[1] Generally, if the plan allows it, employees may make voluntary contributions to a qualified retirement plan of up to 10 percent of compensation. I.R.S. Publication 778, p. 14 (Feb. 1972).

[2] At one time, Congress took the position that a contribution to an H.R. 10 plan on behalf of a self-employed person was made half by the employer and half by the self-employed person; no deduction was allowed for half of the contribution (the half regarded as "contributed by" the self-employed person). This limitation (sec. 404(a)(10)) was repealed for taxable years after December 31, 1967.

reduction plan, the employee generally agrees with his employer to reduce his salary or forgo a salary increase which is contributed into a pension plan for his benefit. In either case, if the plan met certain nondiscrimination requirements, the Internal Revenue Service in the past had taken the position that, under certain circumstances, the payment into the plan would be treated as an employer contribution, not taxable to the employee until benefits were received from the plan. The maximum amount that could be so treated generally was 6 percent of compensation.[3]

On December 6, 1972, the Service issued proposed regulations (37 Fed. Reg. 25938) which would change this result in the case of qualified pension plans by providing that amounts contributed to such a plan in return for a reduction in the employee's basic or regular compensation, or in lieu of an increase in such compensation, will be considered to have been contributed by the employee and consequently will be taxable income to the employee.

The proposed regulations would not affect the tax treatment of contributions to certain qualified profit-sharing plans, where the contributed amounts could be received as a bonus; however, it was indicated that there would be reconsideration of the rulings permitting exclusion of such profit sharing contributions. (Rev. Rul. 56–497, 1956–2 C.B. 284; Rev. Rul. 63–180, 1963–2 C.B. 189; Rev. Rul. 68–89, 1968–1 C.B. 402.) Public hearings have been held on these proposed regulations but regulations in final form have not yet been issued.

General reasons for charge

A number of difficult issues of policy have recently arisen in connection with salary reduction pension plans and cash or deferred profit-sharing plans. On the one hand, it is argued that these types of plans provide a vehicle which allows an employer who could not afford the cost of a conventional pension pension plan to provide pension benefits for at least those of his employees who agree to take the salary reduction. Also, it is argued, there is hope that once a salary reduction plan has been established, the employer may eventually shift to a plan where there are employer contributions with no offsetting reductions in pay for the employees.

On the other hand, many feel that it is difficult to distinguish, for purposes of tax policy, between a contribution made by the employer, at the employee's option in return for a reduction in his pay, and a contribution made by the employee after receiving his pay check from his employer, which is clearly nondeductible under present law. Also, because the salary reduction type plan covers only those employees who elect to be covered (at a cost in terms of their take-home pay), this often means that many employees will not be covered, whereas it is generally desirable that as many employees as possible be covered under the private pension system. Thus, it has been sug-

[3] In the case of employees of tax-exempt charitable, educational, religious, etc., organizations and employees of public educational institutions, a specific statutory provision provides for employer contributions of up to 20 percent of compensation, times years of service, reduced by amounts previously contributed by the employer for annuity contracts on a tax excluded basis to the employees (sec. 403(b)). The regulations under the statute allow the employer contributions to be made under these salary reduction plans. Antidiscrimination provisions that apply generally to qualified plans do not apply to those tax sheltered annuities. The committee bill does not affect the tax treatment of these contributions (although limits are applied to them).

gested by some that salary-reduction plans should be subject to stricter coverage requirements than those imposed in the past by the Internal Revenue Service.

The committee believes that it is impossible to deal with these issues in a satisfactory way without the opportunity for extensive consideration. Moreover, it believes that salary-reduction and cash or deferred profit-sharing plans should not be discouraged until there has been an opportunity for legislative consideration as to what their status should be. Accordingly, the committee bill provides that the proposed regulations should be withdrawn for one year, to give the committee a further chance for study.

Explanation of provisions

Salary reduction plans.—Under the committee bill, the proposed Treasury regulations with respect to salary reduction plans are to be withdrawn. No proposed regulations are to be issued in this area before January 1, 1975. At that point, if Congress has not acted, Treasury may, at its discretion, issue a new set of proposed regulations, which may or may not be similar to the regulations which are to be withdrawn. However, if regulations are issued, they may not become final prior to March 16, 1975, and may not be retroactive for income tax purposes prior to January 1 of that year.

During 1974, the law is to be administered in accordance with the legal principles which were applied before January 1, 1972. In other words, salary reduction plans which already hold favorable ruling letters will continue to remain qualified during 1974, and contributions to those plans will be treated as tax-excludable to the employee on the same basis which would have been the case in 1971. Also new salary-reduction plans may apply for and receive favorable ruling letters if such letters would have been issued based on similar facts in 1971. However, the Internal Revenue Service may wish to provide that ruling letters issued to new plans in this area are limited to 1974.

Cash or deferred profit-sharing plans are to be treated in a similar manner. During 1974, the qualified status and the tax treatment of contributions to such plans is to be governed under principles set forth in Rev. Rul. 56–497, 1956–2 C.B. 284, Rev. Rul. 63–180, 1963–2 C.B. 189, and Rev. Rul. 68–89, 1968–1 C.B. 402. However, if Congress does not decide otherwise. Treasury and the Service may, if they so decide, change their pre-1972 position on the law in this area, by regulations, ruling or other actions, so long as such changes do not become final before March 16, 1975, and are not retroactive prior to January 1, 1975.

For purposes of the social security taxes and the Federal withholding taxes, the regulations are not to be retroactive.

So-called "cafeteria plans", in which the employee may have a choice between cash and certain fringe benefits, some of which may be taxable and some which may normally be nontaxable (e.g., health insurance, group term life insurance within the permissible limits) are to be in the same legal situation during 1974 as salary reduction plans. Your committee sees no difference between this type of plan and salary reduction plans, and concludes that they should receive similar treatment. Here too the committee bill requires a one-year preservation

of the pre-1972 status quo, and the tax treatment of fringe benefits selected under this type of plan is to be governed by the principles which were being applied by the Internal Revenue Service prior to 1972 to salary reduction plans. In the absence of Congressional action, Treasury and the Internal Revenue Service will be free to take any action which is deemed appropriate for 1975, but the regulations may not be issued in final form prior to March 16, 1975.

The committee wishes to make clear that absolutely no inference is to be drawn from this action that Congress either agrees or disagrees with pre-1972 interpretation of the law by Treasury and the Internal Revenue Service concerning salary-reduction plans, cash or deferred profit-sharing plans or cafeteria style plans, or that it agrees or disagrees with the interpretation embodied in the proposed regulations concerning salary-reduction plans which are to be withdrawn under the bill. There is also to be absolutely no inference that if Congress does not act in this area within a year that it would or would not be appropriate to reissue these regulations, or that it would or would not be appropriate to extend the principles thereof to cover cash or deferred profit-sharing plans or cafteria style plans.

Designated contributions.—Under present law, contributions which are designated as employee contributions are generally treated as employee contributions for purposes of the Federal tax law. For example, this is the case with respect to employee contributions under the Federal Civil Service plan. Your committee's bill contains a provision to clarify this rule for the future. This provision provides that amounts that are contributed to a qualified plan are not to be treated as an employer contribution if they are designated as employee contributions.

However, some State and local government plans designate certain amounts as being employee contributions even though statutes authorize or require the relevant governmental units or agencies to "pick up" some or all of what would otherwise be the employee's contribution. In other words, the governmental unit pays all or part of th employee's contribution but does not withhold this amount from the employee's salary. In this situation the portion of the contribution which is "picked up" by the government is, in substance, an employer contribution for purposes of Federal tax law, notwithstanding the fact that for certain purposes of State law the contribution may be designated as an employee contribution. Accordingly, the bill provides in the case of a government pick-up plan, that the portion of the contribution which is paid by the government, with no withholding from the employee's salary, will be treated as an employer contribution under the tax law.

Effective date

The provisions dealing with salary reduction plans and treatment of contributions designated as employee contributions are to take effect upon enactment.

Revenue effect

There is no revenue effect from these provisions since they are consistent with present law, in the case of designated contributions, and simply postpone for one year any possible reinterpretation of present law in the case of salary reduction plans.

G. Lump Sum Distributions

(Sec. 2004 of the bill and secs. 72, 402, and 403 of the code)

Present law

Retirement benefits generally are taxed under the annuity rules (sec. 72) as ordinary income when the amounts are distributed, to the extent they do not represent a recovery of the amounts contributed by the employee. However, an exception to this general rule under the law in effect before the Tax Reform Act of 1969 provided that if an employee's total accrued benefits were distributed or paid in a lump-sum distribution from a qualified plan within one taxable year on account of death or other separation from service (or death after separation from service), the taxable portion of the payment was treated as a long-term capital gain, rather than as ordinary income.

The capital gains treatment accorded these lump-sum distributions allowed employees to receive substantial amounts of deferred compensation at more favorable tax rates than compensation received currently. The more significant benefits under this treatment apparently accrued to taxpayers with adjusted gross incomes in excess of $50,000, particularly in view of the fact that a number of lump-sum distributions of over $800,000 have been made.

To correct this problem, the Tax Reform Act of 1969 provided that part of a lump sum distribution received from a qualified employee's trust within one taxable year on account of death or other separation from service (or death after separation from service) is to be given ordinary income treatment, instead of the capital gains treatment it had been given under prior law. Insofar as the distributions are considered as being attributable to post-1969 years, the portions of the benefits which represented employer contributions were accorded ordinary income treatment while the portions which represented appreciation, interest, or dividends on the amounts accumulated continued to be given capital gains treatment. Of course, no tax was imposed with respect to the employee's own contribution. The use of capital gains treatment was continued for the entire taxable portion attributed to 1969 and earlier years.

The 1969 Act provided a special seven-year "forward" averaging treatment for the portion of the lump-sum distribution treated as ordinary income. A regular employee (or his beneficiary) is eligible for this seven-year averaging treatment if he has been a participant in the plan for five or more taxable years or if his beneficiary received the lump-sum distribution because of death.

In the case of retirement plans for the self-employed ("H.R. 10 plans", the Self-Employed Individuals Tax Retirement Act of 1962) the entire lump-sum distribution (excluding the employee contributions) are taxed as ordinary income, but with five-year forward averaging.[1] No change was made in this provision by the Tax Reform Act of 1969.

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[1] The self-employed are eligible for this special averaging if the lump-sum distributions are received on account of death, disability or if received after age 59½. As with regular employees, the distributions must also be received within one taxable year, and only if the self-employed person had been a plan participant for five or more taxable years preceding the taxable year of the distribution. However, unlike regular employees, the self-employed are not entitled, under present law, to the special averaging simply because of a separation from service.

Self-employed who elect to be taxed under this special averaging rule cannot for the same taxable year use the regular income averaging rules (sec. 1301 *et seq.*) as to this income or other ordinary or capital gain. However, the self-employed generally find this special averaging more advantageous than the regular five-year averaging rule generally available because the latter may be used only to the extent that the income averaged exceeds 120 percent of that taxpayer's average income in the four prior years. Unlike the self-employed, however, the regular employee may use his special seven-year averaging for the ordinary income portion of his lump-sum distribution while using the regular averaging provisions for the capital gain portion of the distribution as well as for any other income he may have.

Reasons for change

The Treasury has had great difficulty in formulating regulations to carry out the 1969 Act provisions for regular employees in determining the precise break-down between ordinary income and capital gain in a lump-sum distribution. It has also had great difficulty in formulating regulations to carry out the 1969 Act provisions for determining the amount of tax imposed on account of the "ordinary income" element of post-1969 lump-sum distributions. Recently, the Treasury withdrew its earlier proposed regulations on the second point and substituted new ones which, in general, would produce lower tax liabilities than those determined under the earlier set of proposed regulations. The new regulations also would produce lower tax liabilities than under current long-term capital gain rates in many cases, and this could mean that they would result in revenue losses, rather than revenue gains, in comparison to the law which would have applied in the absence of any special action with respect to this provision in the Tax Reform Act of 1969.

More important, the new proposed regulations appear to share with the old proposed regulations the problem of excessive complexity. It is frequently maintained that lump-sum distributees are unable to compute their taxes, and that accountants and tax lawyers have been refusing to attempt the computations.

To eliminate undue complexity but maintain the revenue at least as high as that which would result under the proposed regulations under the 1969 Act provision, the committee chose to introduce a new and simplified method of computing the tax due on lump-sum distributions. The substance of the 1969 change in the tax treatment would be preserved, however. Under the bill, all pre-1974 portions of lump-sum distribution would be taxed as capital gain, rather than as ordinary income. The effect of the January 1, 1974, cutoff date under this bill is to provide long-term capital gains treatment for that portion of future distributions that relates to years after 1969 and before 1974; under the 1969 Act, portions of the distributions allocable to those years would have been taxed as ordinary income.

Under the simplified computational rules, ordinary income portions of lump-sum distributions from qualified plans are to continue to benefit from special "forward" averaging. The portion of the distribution representing pre-1974 value is to receive capital gains treatment, as

stated above. The portion of the distribution attributable to post-1973 value in excess of the employee contributions is to be subject to tax as though it were ordinary income of the taxpayer, but his only income, and with 10-year averaging.

This ordinary income treatment for the post-1973 value of the lump-sum distribution is computed completely separately from the taxpayer's other income. This separate computation is used because it was found that taxpayers were, in effect, being treated quite differently depending upon the presence or absence of other income in the year of distribution—something which they sometimes had in their power to control.

The 10-year averaging is provided in order to give roughly the equivalent of what the tax would be were the individual to live 10 years after retirement and receive his interest in the plan over that period. In this case, a tax is completed on $\frac{1}{10}$th of the distribution computed as if the taxpayer had no other income or deductions. After the tax is computed, the result is multiplied by 10, and this amount is then added to the employee's tax liability on his other income. His tax liability on this other income takes into account not only his tax on wages, salary, or investment income, etc., but also the capital gains tax on the portion of the lump-sum distribution attributable to pre-1974 value. The tax liability on this other income does not in any way, however, take into account the portion of the lump sum distribution treated as ordinary income.

In making the ordinary income computation on the post-1973 value, a special minimum distribution allowance is provided to insure that the tax on relatively small lump-sum distributions will generally be not more than it would be under present law. This allowance is phased out for lump-sum distributions over $20,000.

A major problem with the rule arrived at under the 1969 Act was the difficulty in determining the value of the distribution attributable to years before 1970 for which capital gains treatment was continued by that Act. To meet that problem, the committee bill provides that where a lump-sum distribution relates to active participation which began before 1974 and ended after that time, the distribution is to be apportioned between the pre-1974 participation (eligible for capital gains treatment) and post-1973 participation (treated as ordinary income under a separate 10-year averaging computation) on the basis of the amount of time in which the employee was an active participant in each period. This method will significantly simplify the computation previously required.

Table 1 presents a comparison showing the average effective tax rates applicable for taxpayers in various situations and with various amounts of lump-sum distributions, with the methods of computing post-1973 taxable value as capital gain, under present law (with the proposed regulations), and under the committee bill.

TABLE 1.—COMPARISON OF INCOME TAX TREATMENT OF LUMP SUM DISTRIBUTIONS UNDER THE COMMITTEE BILL WITH CAPITAL GAINS TREATMENT AND WITH THE TREATMENT PROVIDED IN 1969 (AS SHOWN BY PROPOSED REGULATIONS)

		Average effective income tax rates (percent)		
Assumed adjusted gross income, other than lump-sum distribution [1]	Assumed lump-sum distribution [2]	Capital gains treatment (1973 law) [3]	1969 treatment as shown by proposed regulations [4]	Rates which apply under Ways and Means Committee bill when all but employee contributions are ordinary income
$5,000	$2,500	7.4	5.1	7.0
	5,000	7.7	5.3	7.0
	10,000	7.4	5.6	7.0
	50,000	8.5	10.6	16.3
	60,000	8.7	11.3	17.8
	100,000	10.6	13.2	20.9
$10,000	5,000	8.1	5.7	7.0
	10,000	9.2	5.9	7.0
	20,000	9.5	8.9	7.3
	50,000	10.4	12.0	16.3
	100,000	12.2	15.4	20.9
	200,000	15.8	19.5	26.2
$25,000	12,500	15.6	11.5	7.1
	25,000	15.7	13.9	9.7
	50,000	16.7	16.1	16.3
	125,000	18.8	20.0	22.2
	250,000	22.3	23.2	28.8
	500,000	25.6	27.2	40.4
$50,000	25,000	24.6	19.6	9.7
	50,000	24.8	21.0	16.3
	100,000	25.5	22.2	20.9
	250,000	27.0	25.2	28.8
	500,000	29.1	28.4	40.4
	1,000,000	31.2	32.5	53.1
$100,000	50,000	25.0	30.1	16.3
	100,000	28.2	31.4	20.9
	200,000	30.7	33.8	26.2
	500,000	32.0	37.0	40.4
	1,000,000	33.8	38.8	53.1
	2,000,000	35.1	43.9	61.5

[1] Income other than lump-sum distributions consists of income taxed at ordinary rates and which is not subject to either the maximum tax on earned income or the minimum tax on items of tax preference. To avoid problems of maximum tax on earned income, ordinary income in excess of $50,000 is considered as coming from sources other than earnings. Taxable income is computed from AGI by deducting the larger of the standard deduction or itemized deductions equivalent to 15 percent of AGI and from personal exemptions of $750 each. Taxpayer is considered to be married and filing a joint return. No additional itemized deductions are considered to accrue to the taxpayer due to the receipt of lump-sum distribution.

[2] Net of taxpayer's basis.

[3] 50 percent inclusion of capital gains in AGI. Taxpayer is eligible for either alternative tax of 25 percent on 1st $50,000 of capital gains or normal 5-year income averaging. Four prior year base period income is assumed to be the same as taxable income excluding distribution for the current year, except for $5,000 AGI class which is assumed to have a base of $1,462.50 and the $10,000 AGI class which is assumed to have a base of $5,850.

[4] 70 percent of distribution assumed to be capital gains; 30 percent ordinary income.

The committee concluded that in the interest of simplification it was desirable to provide the same averaging treatment for lump-sum distributions for both the self-employed and the regular employees. As a result, the distinction of present law that accords 5-year averaging to distributions to self-employed and 7-year averaging to distributions to regular employees is eliminated and the 10-year averaging treatment referred to above is made available in both cases.

Under the committee bill, the portion of eligible distributions attributable to pre-1974 value is to be taxed as capital gain to the self-employed in the same manner as in the case of regular employees. Also in both cases, the bill will allocate distributions between capital gain and ordinary income on the basis of the portion of the time the employee was a participant prior to 1974 and after 1973.

Many of the requirements for lump-sum treatment are the same under present law for regular employees and the self-employed.[2] However, there also are differences in present law in granting eligibility for lump-sum treatment in the case of regular employees and the self-employed, and because of basic differences in their status it was necessary to retain some of them. One difference is that regular employees may claim the special averaging treatment if the distribution is on account of their separation from service, whereas the self-employed cannot. It was necessary to maintain this distinction because there is no comparable concept of "separation from service" for the self-employed.

On the other hand, the committee bill does remove a difference in treatment between the self-employed and regular employees by permitting the latter, as well as the self-employed, the right to claim the special averaging treatment in instances of distributions to those who have attained age 59½ whether or not there is a separation from service. However, both classes of persons are to be eligible for this special treatment only once after attaining age 59½.[3]

The committee bill also removes another difference in treatment between these two classes of persons by providing that the self-employed, as well as regular employees, may claim the normal five-year averaging (provided under sec. 1301 of the code) for their other taxable income, including any capital gain portions of their lump-sum distributions. (The regular five-year averaging rule is provided under present law for cases in which taxable income in any taxable year increases markedly from taxable income in prior years).

Explanation of provisions

Under the simplified computation of the tax on lump-sum distributions, the post-1973 portion of a distribution is to be taxed as ordinary income (but with 10-year "forward" averaging), thus maintaining the recognition in the Tax Reform Act of 1969 that the taxable portions of these distributions are basically deferred compensation, and generally should be taxed as is other compensation; that is, as ordinary income. Ten-year averaging is provided to recognize the fact that the distribution represents compensation which generally is received spread out over the taxpayer's life beginning with the time he retires. Ten-year averaging, insofar as the size of the tax is concerned,

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[2] In the case of both regular employees and the self-employed, in order to qualify for the ten-year averaging, the entire distribution made to them must be made within one taxable year and they must have been participants in the plan for at least five years prior to the year in which the distribution was made. This latter rule does not apply to distributions made in the event of death.

[3] The special averaging will continue to be made available to distributions on account of the disability of a self-employed person (in general if the disability is an impairment which would result in death or can be expected to be of long-continuing and indefinite duration). Regular employees may claim the special averaging for distributions on account of disability only if the disabled employee has attained age 59½ or is separated from service, as, for example, on account of the disability.

achieves this result. It is believed that it would be unfair to use the high tax rate that would be applicable if the distribution were treated as received wholly in one year. As a result of the averaging, the distribution would be taxed roughly as if it were received in 10 equal parts in 10 years. The decision to tax this income separately from all other income (to the extent it is not treated as pre-1974 income eligible for capital gains treatment) was made on the basis that most distributees will have little or no other taxable income in the years following their retirement.

The decision to use 10-year averaging is attributable to the fact that 10 years represents the approximate life expectancy of a person age 65 and therefore is approximately the period over which the income would be spread if not received in the form of a lump-sum distribution.

The portion of the distribution attributable to pre-1974 service is to be taxed as capital gain and taxed along with any other income the taxpayer may receive. For this income, the committee believed it was appropriate to preserve the pre-1969 treatment (at current capital gains rates) to the fullest extent possible. The portion which constitutes a return of employee contributions continues to be nontaxable as a return of basis.

Under the computation, the capital gain portion is included in the amount of the taxable distribution prior to the deduction of the minimum distribution allowance and the application of the 10-year averaging rule. After a total tax is determined under the 10-year averaging rule, the tax on the ordinary income element is the portion of that total tax determined according to that portion of the plan participant's total time in the plan that was spent after 1973. The capital gain is added to the taxpayer's other income and this total (minus regular deductions, exclusions, etc.) is taxed under usual rules. (See the examples at the end of this section.)

A further simplification from prior law in the computation is the determination of the amounts to be attributed to pre-1974 employment (capital gain taxation) and to post-1973 employment (10-year averaging with ordinary income taxation). That attribution is to be made on the basis of the amount of time in which the distributee was an active participant in each period. Thus, if a distributee was an active participant from January 1, 1971, through December 31, 1980, three-tenths of the taxable portion of his distribution would be taxed as capital gain while seven-tenths would be taxed as ordinary income and averaged over 10 years.

Although the breakdown between capital gain and ordinary income is normally to be made on the basis of the number of calendar years in which the participant was active in the plan before and after December 31, 1973, the Secretary is authorized to issue regulations describing circumstances under which participants may use plan years instead of calendar years. This is intended to further simplify the computation for those plan participants whose information concerning their participation is prepared and given them by plan administrators in terms of plan years, rather than calendar years.

In order to treat all distributees equally, all computations of the tax on the ten-year averaging ordinary income portion are to be made

on the basis of the tax schedule for unmarried individuals.[4] In addition, community property laws are generally to be ignored for these purposes.[5]

In computing the tax on the ordinary income element, a special minimum distribution allowance is to be provided to give assurance that the tax on relatively small lump-sum distributions will not be appreciably more than under present law. In the computation, the amount of the taxable distribution (the total distribution less the participant's payments) is to be reduced by the minimum distribution allowance before the tax is computed. The allowance is half of the distribution up to $20,000. Above that level, it is phased out on a $1.00 for $5.00 basis, with the result that it is entirely eliminated for distributions of $70,000 or more.

To protect against tax avoidance possibilities the bill provides that distributions made during the current taxable year and the five previous taxable years of the recipient are to be included in the ten-year averaging computation for purposes of determining the tax rate on the last distribution. When the total tax is determined, however, the amount of this tax attributable to any earlier distributions (determined as illustrated in the examples following this discussion) is to be subtracted and the tax on the final distribution is the remainder. Generally all distributions made within the current and five prior taxable years to the same recipient are to be subject to this five-year lookback rule. Lump-sum distributions made prior to 1974 need not be aggregated under this rule.

Aggregation of distributions for this purpose is required of all lump-sum distributions in the current and five prior years with respect to the same recipient.[6] In the case of receipt of subsequent distributions by the plan participant in the six-year period, this would mean the aggregation by the participant of all those distributions would be required. In the case of a plan participant receiving a distribution from his or her own retirement plan and also receiving a distribution as a beneficiary, those distributions would also have to be included in the aggregation. Moreover, it is not intended that a recipient of one distribution could escape the inclusion of another distribution he is entitled to claim by directing that it be made instead to a beneficiary.

Aggregation is required only of lump-sum distributions. If a recipent is entitled to special averaging for a distribution, but does not elect the special averaging, he is not required to aggregate that distribution with a subsequent lump-sum distribution for which he does

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[4] Distributees, in computing the tax on their other income (including the capital gain element of the distribution), may use any appropriate tax schedule. They are not restricted to the schedule for unmarried individuals.

[5] Prior to the computation of the separate tax on the ordinary income portion of the distribution, under the committee bill an amount must be subtracted from the income of the retiree. In community property states, the amount subtracted will, of course, generally be only one-half of the ordinary income portion of the lump-sum distribution. The other half of this lump-sum distribution must be subtracted from the income of the spouse which may be reported on a separate tax return. After the computation of the separate tax with respect to the ordinary income portion, this tax is added to the tax of the retiree alone as otherwise computed, and not to that of the spouse where she is computing her tax on a separate return. The capital gain portion of the lump-sum distribution in a community property state is to continue as under present law to be included one-half in the income of the retiree and one-half in the income of the spouse.

[6] Requiring aggregation of all lump-sum distributions with respect to the same participant, rather than with respect to the same recipient, was rejected because of the difficulty recipients would have in determining the amount of previous lump-sum distributions to different recipients, as well as the tax paid by those earlier recipients.

elect the special averaging since the former distribution is excluded from the definition of a lump-sum distribution.

The distribution of an annuity contract is to be taken into account in the taxation of lump-sum distributions although the contract itself is not to be treated as a taxable lump-sum distribution. If an annuity is distributed to a recipient in the same six-taxable-year period in which a lump-sum distribution that is not an annuity distribution is made to the same recipient, the value of the annuity (only for purposes of computing the tax on other lump-sum distributions) is to be added to the amount of cash or value of the other property distributed and a tax is to be calculated on the sum. From that amount is to be subtracted the tax calculated on the value of the annuity alone (reduced by the minimum distribution allowance applicable to the total). The remainder is the tax on the taxable portion of the aggregated lump-sum distribution.[7] The value of the annuity, for these purposes, is to be the present value of the payments anticipated under the annuity contract, computed with regard to the life expectancy of the recipient.

The effect of treating annuity distributions as lump-sum distributions is only to increase the tax rate payable on the taxable distribution. Annuity distributions, standing alone, remain nontaxable, as under present law. Furthermore, their inclusion in the computation is not to increase the capital gains tax payable on account of pre-1974 value of the aggregated distributions.

Of course, trusteed annuities, the rights to which have not been distributed, are not to be included in the lookback rule computation.

The committee bill does not change the present tax treatment of distributions of employer securities. Therefore, appreciation of the value of employer securities between the time the securities were allocated to the participant's account and the time of the distribution would not be taxed upon the distribution, but would be taxed as capital gains upon an eventual sale of those securities by the recipient. These, unlike distributions of annuity contracts, would not be included in the aggregated distributions for purposes of the tax computation.

A recipient of a distribution could not use this special ten-year-averaging method unless he combines all amounts received in any taxable year that might be eligible for this special averaging system into a single lump-sum distribution. For example, if an employee has been working for separate employers at any time during his working career and receives in one taxable year distributions from two or more employers of the entire amounts (or, in the case of an annuity purchase, is credited with the entire amount) due him under the plans of those particular employers, that employee must treat all the distributions to him in that year as a single lump-sum distribution in order to claim the ten-year averaging.

For a distribution to be eligible for the special lump-sum distribution treatment an employer must distribute to an employee (or, in the case of an annuity, distribute to that employee's credit) all of the bal-

[7] If the distribution of an annuity is the final lump-sum distribution in any six-taxable-year period, a tax is determined based on the tax rate applicable to the total of the aggregated distributions, including the annuity distributions. The tax deemed payable on account of the annuity distributions is subtracted, as above described, a credit is given for the tax earlier paid on account of the cash distributions, and the remainder is the tax due for the final taxable year in the six-year period on account of the distributions. Of course, this does not increase the basis of annuity contract.

ance due the employee from all the employer's pension plans, all the balance from that employer's profit-sharing plans, or all the balance from that employer's stock bonus plans. This prevents the tax avoidance which would otherwise occur as the result of successive distributions in subsequent years from different plans of the same employer.

Although the number of separate distributions is limited as described above, elections to use this special ten-year averaging may be made freely for all permitted lump-sum distributions until the employee has attained age 59½. And that time, only one election may be made with respect to that employee. This would permit a widow to make an election for the special averaging for a distribution on account of her deceased husband while making another election in a subsequent year for her own retirement distribution although both she and her husband had attained age 59½ at the time of the distributions. However, an employee who receives a lump-sum distribution on his own account after age 59½ and elects the special averaging treatment may not thereafter make the same election for another distribution on his own account in another taxable year. The effect of this is to prevent most retiring taxpayers from avoiding the aggregation required under the five-year rule by electing the special averaging for years that are six or more years apart.

Despite the limitation of one election with respect to individuals who have attained age 59½, if such an individual makes an election to use ten-year averaging for one distribution, and then later receives an annuity distribution within the six-year aggregation period, the annuity and the prior distribution (or distributions) must be aggregated.

It is contemplated that a taxpayer will make his election on the income tax return for the taxable year in which the distribution was made. The election, however, is not to be irrevocable, and can be changed so long as the income tax return could be amended or a refund claim could be filed. (Normally, a refund claim must be filed within three years after the return is filed.)

Individuals, estates and certain trusts may elect to use this special lump-sum distribution treatment.[8] Of course, the normal constructive receipt and anticipatory assignment of income rules would be applicable to distributions to trusts, as under present law. Thus, if a lump-sum distribution is made to a nontestamentary trust having a beneficiary other than the employee as the primary beneficiary, the distribution would generally be taxable to that employee.

As a result of this and the specific language of the bill, an individual could not avoid the aggregation rules by making distributions to multiple trusts for the benefit of the same beneficiary. Similarly, the aggregation rule could not be avoided by reciprocal trusts.

A trust would not be permitted to make the election, and thereby claim the special averaging treatment, if the use of the trust by the distributee has affected the includibility of the distribution in the gross estate of the employee for purposes of that employee's estate tax.

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[8] However, an estate or a trust will be prohibited from making the election if an election has already been made—by another trust or by the individual himself—with respect to that same individual after he has attained age 59½.

The plan participant would be treated as the recipient of a distribution, for purposes of the aggregation rules, if he causes a lump-sum distribution to be made to a trust for the benefit of his wife, but with the income or right to the income reserved to himself, or in any other situation in which the participant would be treated as the substantial owner of the trust under the present tax rules, even if the grantor of the trust is the employer or plan.

The tax paid on a lump-sum distribution under this special averaging treatment rule is neither to be a tax preference item (in the sense of section 56 of the Code), nor is it to be used as a part of the tax paid that reduces the minimum tax on tax preference items.

First example.—On December 31, 1975, A terminates his services and receives a lump sum distribution of $65,000 from a qualified plan. The distribution includes employer securities with a fair market value of $25,000 and a basis of $10,000. A has been participating in the plan since January 1, 1966. The plan is noncontributory. A is married; both A and his wife are 50. Their only other income is A's salary of $15,000 and his salary from a second job ($5,000). Their itemized deductions are $3,000. Their average base period income from the preceding four years (1971 through 1974) is $14,000.

The tax on the portion of the distribution which is not treated as a long-term capital gain is computed as follows:

Net distribution ($65,000 total distribution less $15,000 unrealized appreciation on employer securities)	$50,000
Less: Minimum distribution allowance: 50 percent of first $20,000	10,000
Reduced by: 20 percent of net distribution in excess of $20,000	6,000
	4,000
Distribution less allowance	46,000

The tax on $\frac{1}{10}$th of the distribution less allowance computed from the tax rate schedule for single taxpayers is $816.00.

Multiply this amount by 10: $8,160.00.

Then, multiply by the fraction,

$$\frac{\text{Years of participation in plan after 1973}}{\text{Total years of participation}} = \frac{2}{10} 0.2$$

which yields $1,632.00.

Thus, the tax on the ordinary income portion of the distribution is $1,632.00.

The amount of the distribution taxed as a long-term capital gain is the amount of the net distribution multiplied by the fraction,

$$\frac{\text{Years of participation before 1974}}{\text{Total years of participation}} = \frac{8}{10} 0.8$$

Net distribution	$50,000
Capital gains element	40,000

The capital gains element is taxed along with other income (exclusive of the ordinary income element) in the normal way. The tax on the taxable income of $35,500 ($15,000 salary from first job, plus $5,000 from second job, plus $40,000 capital gains element of lump sum distribution, less $20,000 capital gains exclusion, less $3,000 item-

ized deductions, less two $750 personal exemptions) is calculated using the tax rate schedule for married taxpayers filing joint returns. In this case the alternative tax on capital gains is not available, but the regular-five-year income averaging provisions are.

Ordinary tax	$10,130.00
Tax—Using regular income averaging [1]	8,828.00

[1] As indicated above, average base period income is $14,000.

Selecting the tax computation method which yields the smallest amount of tax, A uses the regular five-year income averaging method and has a tax of $8,828.00.

Finally, A combines the tax on the capital gains portion of the distribution and his salary, with the tax on the ordinary income portion of the distribution:

Tax on salary and capital gains portion of distribution	$8,828.00
Tax on ordinary income portion of distribution	1,632.00
Total 1975 income tax	10,460.00

A's basis in the employer's securities is $10,000.

Second example.—On December 31, 1976, A receives a distribution from a qualified plan with respect to his second job. In this case the distribution is a nontransferable annuity contract, the value of which is $6,000; and a cash distribution of $4,000 financed solely by the employer. A had participated in the plan since January 1, 1967. Mr. and Mrs. A's only other income in 1976 is A's salary of $25,000 and interest of $3,000 on the $40,000 cash received in the prior lump sum distribution. They have itemized deductions of $2,100. Mr. and Mrs. A's 1976 tax is computed as follows:

First, compute the tax on the portion of the distribution which is not treated as a long-term capital gain and which is taxed separately.

Step 1:

1976 cash distribution	$4,000
1976 annuity contract	6,000
Prior year net distribution	50,000
Total	60,000
Less: Minimum distribution allowance: 50 percent of first $20,000	$10,000
Reduced by: 20 percent of net distribution in excess of $20,000	8,000
Total	2,000
	58,000

Ten times the tax on one-tenth of $58,000 (from the rate schedule for single taxpayers) is $10,680.

Step 2:

1976 annuity	$6,000
Minimum distribution allowance from Step No. 1	2,000
Total	4,000

Ten times the tax on one-tenth of $4,000 (from the rate schedule for single taxpayers) is $560.00.

Step 3: $10,680.00—$560.00=$10,120.

Step 4:

Determine ordinary income and capital gains elements of A's distribution and his prior year distribution. The ordinary income element of A's latest distribution is determined by multiplying the cash distribution of $4,000 by:

$$\frac{\text{Years of participation in plan after 1973}}{\text{Total years of participation}}=\frac{3}{10}=0.3$$

Thus, A's ordinary income element is $1,200. $10,000 of Mr. A's prior distribution of $50,000 was ordinary income.

Thus, the tax on the ordinary income element is the fraction of the tax from Step No. 3 which the ordinary income elements of the 1976 and prior year distributions bear to the entire distributions.

$$\left.\frac{\$1,200+\$10,000}{\$4,000+\$50,000}\right\}\times\$10,120=\$2,098.96$$

Step 5:

The tax on the ordinary income element of A's 1975 distribution from their 1973 income tax income return was $1,632.00. Subtracting that from the tax calculated in Step No. 4 yields the tax on the ordinary income element of A's latest distribution:

$$\$2,098.96-\$1,632.00=\$466.96$$

Second, compute the tax on all other income, including the capital gains portion of the distribution.

Step 6:

In Step No. 4, the ordinary income element of the distribution was calculated as $1,200. Therefore, the long-term capital gains element is:

$$\$4,000.00-\$1,200.00=\$2,800.00$$

Step 7:

The capital gains element is taxed along with other income in the ordinary manner.

Capital gains element	$2, 800
Less: 50 percent of net long-term capital gain	1, 400
Total	1, 400
Salary	25, 000
Interest	3, 000
Adjusted gross income	29, 400
Less: Itemized deductions	2, 100
Less: Personal exemptions (2×$750)	1, 500
Taxable income	25, 800

The tax on $25,800 is calculated using the tax rate schedule for married taxpayers filing joint returns. In this case, neither the alternative tax on capital gains nor the regular five-year income averaging provision is available.

Ordinary tax	$6, 308. 00

Third, A combines the tax on the capital gains portion of the distribution and his other income, with the tax on the ordinary income portion of the distribution.

Step 8:

Tax on capital gains portion of distribution and on other income	$6,308.00
Tax on ordinary income portion of distribution	466.96
Total 1976 income tax	6,774.96

If in the examples above, A has attained age 59½, he may elect to treat only one of the distributions as a lump sum distribution qualifying for ten-year averaging. In computing the tax liability on the distribution which he elects to qualify for ten-year averaging, A will not aggregate any distribution (except in the case of a distribution of an annuity contract) made after attaining age 59½ which is not treated as a lump sum distribution for purposes of the ten-year averaging.

Effective date

These lump-sum distribution provisions are to apply to distributions made in taxable years beginning after December 31, 1973. The aggregation required under the five-year lookback rule is not to include distributions made prior to that effective date.

Revenue effect

The revised tax treatment of lump-sum distributions from retirement plans is expected to result in the long run in annual revenue gains amounting to $60 million a year based on 1973 levels of income.

H. Miscellaneous

1. Registration with Social Security

General reasons for change

The mobility of labor in the United States has been steadily increasing. From the standpoint of the economy, this is generally viewed as a desirable factor since it enables us to overcome labor shortages in limited areas or specific industries. It also tends to decrease frictional unemployment. However, those employees who move from job to job have had difficulty in earning vested retirement benefits, and even where these benefits are earned, they have faced difficulties in collecting the benefits upon retirement.

Your committee understands that, upon retirement, employees who frequently changed employment during their working years may have difficult problems in locating their former employers and the retirement plans in which they may have vested benefits. At times, this results from their former employers (or the plans) having changed name or address, or having merged with other organizations. At other times, the employees themselves may not have been able to maintain the records needed to enable them to contact their former employers. Alternatively, they may have forgotten that they had vested rights in plans with former employers.

To resolve this problem, the bill provides that the Social Security Administration is to maintain records of the retirement plans in which individuals have vested benefits, and is to provide this information to plan beneficiaries.[1]

[1] The bill also provides for a tax-free transfer of funds between a qualified plan and individual retirement accounts, which should meet any additional need for "portability".

Explanation of provisions

Under the bill, the administrator of every funded plan of deferred compensation is to file an annual statement with the Secretary of the Treasury regarding individuals who have a right to a deferred vested benefit under the plan and who, during the year, separated from service covered by the plan. The Secretary of the Treasury is to provide this information to the Secretary of Health, Education, and Welfare; in this way it is contemplated that the plan administrator can file this statement together with other annual returns for the plan filed with the Secretary of the Treasury. (It is also contemplated that similar registration requirements will be established under the Labor Department. Consequently, to avoid the problem of duplicate reports, the bill provides that regulations issued by the Secretary of the Treasury respecting this provision will not be effective for plan years beginning after 1975. Your committee expects that the Secretary of the Treasury also will approve regulations issued by the Secretary of Labor.)

The annual statement is to include the name of the plan, the name and address of the plan administrator, and the name and taxpayer identifying number (generally the Social Security number) of every individual who has separated from service covered by the plan in the plan year for which the statement is filed and who is entitled to a deferred vested benefit under the plan. The statement also is to include information on the nature, amount and form of the individual's deferred vested benefit as of the time he left employment. In addition, the statement is to include other information required by the Secretary of the Treasury. However, the statement need not include information about persons who separated from service if they were paid retirement benefits, such as annuities, from the plan during the year of separation. In addition, each covered plan is to notify the Secretary of the Treasury of any change of name of the plan or change of name or address of the plan administrator, any plan termination, or any plan division or merger or consolidation with any other plan.

The plan administrator also is to furnish each individual included in the annual registration statement with the information in that statement regarding his plan rights. In addition, the plan administrator is to furnish satisfactory evidence to the Secretary of the Treasury, upon filing the annual registration statement, that he has furnished individual plan participants with a statement of their rights under the plan. It is expected that a declaration under penalty of perjury of delivery or mailing to each named individual will ordinarily be sufficient evidence.

With respect to multiemployer plans, it may be difficult for plan administrators to determine when a plan participant has separated from service. Consequently, the Secretary of the Treasury is to establish regulations providing for annual registration statements by multiemployer plans.

Upon the request of the plan participant (and in accordance with regulations), the Social Security Administration will furnish him any information which it has relating to his vested retirement plan benefits. In addition, when a person applies for Social Security retirement, disability, death, or hospital insurance benefits, on determining whether these benefits are due, the Social Security Administration will

also inform the claimant of any information which it has relating to the vested retirement plan benefits of the participant. The Social Security Administration is not to attempt to verify the accuracy of the information it receives with respect to plan rights, nor to determine the present value or status of any plan rights, but is only to report the information that it receives and records.

Your committee understands that the value of plan rights will often change between the time that a report is made and the time a participant (or his beneficiaries) are informed of their rights by the Social Security Administration. However, your committee believes it is important for a plan to go on record as to these rights as of the time of separation from service. Additionally, it is expected that the Social Security Administration will make it quite clear, at the time it informs applicants of their rights, that the information given is what was received from the plan and that changes in rights may have occurred after the time the information was received from the plan.

In order that persons who have left employment with vested rights before the effective date of this provision may benefit from the provision, the bill provides that the Secretary of the Treasury also may, pursuant to regulations, receive reports from covered plans relating to the deferred vested retirement benefits of any plan participant who has terminated his employment with the employer in plan years before the effective date of the provision. These reports would be filed by plan administrators on a voluntary basis. Voluntary reports also may be filed by governmental plans and church plans.

If a plan administrator fails to file the annual registration statement, he is to be subject to a penalty of $1 per day for each participant with respect to whom there has been a failure to file; the maximum penalty is $5,000 per plan year. However, plan administrators will not be subject to the penalty upon failure to file due to reasonable cause. A penalty also is to be imposed on a plan administrator who does not file with respect to changes in plan status. The penalty is to be $1 per day, up to a maximum of $1,000; however, no penalty will be owed if failure to file was due to reasonable cause.

If a plan administrator willfully furnishes a false or fraudulent statement of vested rights to individual participants or willfully fails to furnish the required statement, he will be subject to a penalty of $50 per participant.

Effective date

The provisions of the bill which require an annual registration statement with respect to persons separating from service with vested benefits (and with respect to the certificate of rights furnished to each such person) are to with respect to plan years beginning after December 31, 1975.

2. REQUIREMENTS FOR QUALIFICATION OF TRUSTS BENEFITING OWNER-EMPLOYEES

Under present law (section 401(d) of the code), if a trust provides benefits for employees some or all of whom are owner-employees, the

trust may qualify for tax benefits only if the trustee is a bank.[1] The committee believes that this provision is too restrictive, and that other entities could handle the task as well.

For that reason, the committee bill (section 1022) would permit a "person" other than a bank to be the trustee of such a trust without causing the trust's disqualification. The bank or other person performing as such a trustee must be able to satisfy the Internal Revenue Service that he will hold the trust assets in a manner consistent with the general eligibility requirements for tax qualification. Furthermore, the provision in present law allowing someone (including the employer) other than the trustee or custodian to have authority to control the investments of the plan account, whether by directing the investment policy or by exercising a veto power over investments, is retained under the committee bill.

This provision generally applies to plan years beginning after the date of enactment. However, in case of a plan in existence on the date of enactment, the provision applies to plan years beginning after December 31, 1975.

3. CUSTODIAL ACCOUNTS AND ANNUITIES

Present law permits custodial accounts to qualify for tax benefits as if they were trusts, provided that the custodian is a bank, and provided also that the custodial account meets the requirements that a trust would have to meet for qualification. Furthermore, the custodial account's assets must be invested solely in open-end mutual funds or solely in annuity, endowment, or life insurance contracts (and certain other conditions must be met) (sec. 401(f)(1)).

The committee believes that allowing entities other than banks to be custodians of custodial accounts that might be qualified would enhance competition and open the field to other types of enterprises that wish to engage in it and are suited for it. Accordingly, the committee bill permits a person other than a bank to be custodian of such a custodial account. In addition, in order to permit the participation of the insurance industry, the committee bill allows an annuity contract to be treated as a trust that is eligible for qualification, provided that the annuity contract meets the same requirements a custodial account must meet, just as it treats a custodial account as eligible for qualification. The bank or other person holding the assets of the custodial account or holding the annuity contract must satisfy the Internal Revenue Service that it will hold the assets in a manner consistent with the general eligibility requirements for tax qualification. (For example, any distributions prior to age 59½ to owner-employees would have to be reported to the Internal Revenue Service.)

Just as the bank is treated as the trustee of a qualified custodial account under present law, so also would another entity holding the assets of a qualified custodial account or holding a qualified annuity contract be treated as the trustee under the proposed amendment.

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[1] This subsection of present law, and the proposed amendment, would be inapplicable for trusts created before October 10, 1962, that did not qualify for tax benefits on October 9, 1962. Those trusts would not be entitled to use either a bank or another person as trustee of a trust benefiting owner-employees.

This provision generally applies to plan years beginning after the date of enactment. However, in case of a plan in existence on the date of enactment, the provision applies to plan years beginning after December 31, 1975.

4. SECTION 403(B) ANNUITY PLANS

Under present law, contributions to a section 403(b) plan (a plan funded by employers for the benefit of teachers or employees of tax-exempt organizations) may be invested only in insurance contracts. The committee believes that it would be desirable to provide more flexibility in this area, and, accordingly, the committee bill provides that these contributions may also be placed in qualified custodial accounts if those funds are to be invested in mutual funds. The committee bill, however, would make these custodial accounts subject to certain requirements of the code, such as those pertaining to reporting, unrelated business income, and prohibited transactions.

This provision generally applies to plan years beginning after the date of enactment. However, in case of a plan in existence on the date of enactment, the provision applies to plan years beginning after De-December 31, 1975.

5. REPORTING AND PUBLICATION OF RETURNS

In order that many of the new rules governing qualified plans may be enforced, new reporting and publication requirements are needed.

The bill restates present law by requiring employers (or plan administrators) who establish or maintain deferred compensation plans to file annual information returns. Also, the bill provides that the Secretary of the Treasury may provide reporting requirements with respect to the retirement savings deduction and individual retirement accounts, etc.

The bill opens to public inspection the employer's application for a determination that a plan is qualified and that the trust under the plan is exempt (including papers submitted in support of these applications). Additionally, determination letters issued by the Internal Revenue Service dealing with qualification or exemption of plans and trusts are to be open to public inspection. Annual returns with respect to qualified plans are also to be open to public inspection. However, under the bill information contained in these papers and documents from which the compensation of any participant (or other person) may be ascertained is not to be open to public inspection. (However, all other information in these documents is to be available to the public, including information such as the numbers of individuals covered and not covered in a plan, listed by compensation range.) These rules are to enable plan participants and beneficiaries to obtain the full information needed to enforce their plan rights, pursuant to the new rules established in the bill, and are also to protect the confidentiality of information regarding the financial status of specific individuals.

The bill establishes a penalty for failure to file annual returns; the penalty will be $10 for each day that a return is late, up to a maximum penalty of $5,000 for any one failure to file. However,

this penalty will not be owed if failure to file is shown to be due to reasonable cause. For this purpose, your committee's intent is that a failure to provide material items of information called for on a return be treated as a failure to file a return.

The provisions of the bill making applications, determination letters and other documents open to public inspection are to go into effect for applications filed or documents issued after December 3, 1975. The provisions of the bill requiring annual returns to be filed are to become effective for plan years beginning after the date of enactment. The provisions regarding reporting with respect to individual retirement accounts are to become effective on January 1, 1974.

6. CERTAIN PUERTO RICAN PENSION PLANS

Present law

Under present law a pension trust, to be a qualified trust under section 401 of the code, must be created or organized in the United States. Thus, a Puerto Rican pension trust which qualifies for tax exemption under the laws of Puerto Rico (13 L.P.R.A. § 3165) is not exempt from U.S. tax on its income from U.S. sources.

General reasons for change

Puerto Rican pension trusts which satisfy the requirements of the Puerto Rican tax law are unable to diversify their portfolio by investing in U.S. securities without paying U.S. income tax on the income derived from such investments since they are not able to qualify for exemption under the U.S. tax law. On the other hand, since the requirements for qualification under U.S. and Puerto Rican law are roughly comparable, a Puerto Rican pension plan is able today to establish a trust in the United States which satisfies both the U.S. and the Puerto Rican tax provisions. Since the Puerto Rican Government has established requirements in its tax law for when a trust forming part of a pension plan for participants who are residents of the Commonwealth of Puerto Rico is entitled to be treated as a qualified trust, your committee believes it is appropriate to eliminate the distinction under U.S. law as to the place of organization or creation of a trust entitled to be qualified under U.S. law, if that trust is created or organized in Puerto Rico and if the trust has satisfied the requirements for qualification under the Puerto Rican tax laws.

Explanation of provision

Your committee's bill provides that for purposes of exemption from U.S. tax under section 501(a) of the code, a trust which is part of a pension, profit-sharing, or stock bonus plan all of the participants of which are residents of the Commonwealth of Puerto Rico is to be treated as an organization described in section 401(a) of the code, if the trust forming part of the plan is exempt from income taxes (13 L.P.R.A. § 3165) under the laws of the Commonwealth of Puerto Rico.

Effective date

The provision is to be effective for taxable years beginning after December 31, 1973.

7. DEDUCTION FOR CERTAIN EMPLOYER CONTRIBUTIONS FOR SEVERANCE PAYMENTS REQUIRED BY FOREIGN LAW

Present law

Under present law contributions to a nonqualified trust are deductible (sec. 404(a)(5)) in the year in which an amount attributable to the contribution is included in the gross income of the participant, but in the case of a plan in which there is more than one participant only if separate accounts are maintained under the plan for each participant. Generally, amounts attributable to the contribution under such a plan would be includable in a participant's income in the taxable year that the participant's rights become nonforfeitable

General reasons for change

The laws of a number of foreign countries require an employer who is engaged in a trade or business in that country to make payments to its employees at the time the employer separates from the service of the employer. This type of requirement of foreign law generally results in a plan which is in the form of a defined benefit plan and for which separate accounts are not maintained for the participants. The requirement of separate accounts for the participants as a condition of deductibility is generally necessary for employees who are subject to U.S. taxes in order that separate accounting is maintained for the amount that is required to be included in the employee's gross income.

In the case of employees who are nonresident alien employees of the employer employed in a trade or business in a foreign country, their gross income from their employment is from sources outside the United States and is not subject to U.S. tax. Accordingly, your committee has decided that the requirement of separate accounts is an unnecessary requirement in the case of nonresident alien employees who are employed in a trade or business receiving benefits required by

Explanation of provision

Your committee's bill provides that for taxable years beginning after December 31, 1973, an employer in determining for purposes of section 404(a)(5) the taxable year in which any contribution is includable in the gross income of nonresident alien employees of such employer, paragraph (5) of section 404(a) is to be applied as not requiring that separate acounts be maintained for the nonresident alien employees if three conditions are satisfied. First, the employer is engaged in trade or business in a foreign country. Second, with respect to that trade or business, the employer is required by the laws of that foreign country to make payments, based on periods of service, to its employees or their beneficiaries after the employee's death, retirement, or other separation from service. Third, the employer establishes a trust (whether organized within or outside the United States) for the purpose of funding the payments required by the foreign law. A nonresident alien individual is treated for this purpose as including an amount in gross income, even if the income is from sources outside the United States and is not subject to U.S. tax.

Effective date

This provision is to be effective for taxable years beginning after December 31, 1973.

8. STUDY OF GOVERNMENTAL PLANS

Under present law, the Civil Service Retirement System and most employee retirement plans of State and local governments are qualified under the Code. It appears, however, that many governmental plans, including the Federal plan, may be unable to meet the new participation, vesting, and funding standards that would be contained in the committee bill. The committee bill, therefore, would require the committee to study the extent to which governmental plans in fact do not meet the new standards and to make recommendations as to the extent to which those plans, or some of them, should be required to conform to the new standards.

Although governmental agencies do not pay taxes, and hence would not lose any tax deductions for current employer contributions if their plans should fail to qualify, one consequence of governmental plans' ceasing to qualify would be that the employees covered by those plans would have to take into income benefits funded by employer contributions (including any increments in those benefits) as those benefits vested (become nonforfeitable), rather than later, upon distribution of the benefits. In addition, it appears uncertain whether the trust funds of nonqualifying governmental plans would be taxable on the interest and appreciation earned by the funds.

A certain consequence of a failure of a governmental plan to qualify would be that lump-sum distributions would not be eligible for the special averaging treatment permitted under certain circumstances if such distributions are made from qualified plans. In addition, the exclusion from the gross estate of the value of an annuity receivable by certain beneficiaries to the extent attributable to employer contributions would be lost if the plan were not qualified, and so also would be lost the employee's right to elect to make an annuity a joint and survivor annuity (thus making payments become payable to a beneficiary at or after the employee's death) without thereby incurring gift tax liability.

In general, the committee would seek to determine whether requiring governmental plans to adhere to the new standards (to the extent they do not already do so) would entail unacceptable cost implications to governmental entities. With regard to funding, it has been argued that governmental plans should be exempt from funding standards since the taxing power can be viewed as a practical substitute for these standards. On the other hand, there have also been reports that in the case of a number of governmental units, such generous pension promises have been made, and so little funds have been set aside currently, that the practical likelihood of imposing sufficient taxes to pay those benefits may be open to question.

The committee, in determining whether any governmental plan is adequately funded, would consider the taxing power of the particular governmental unit involved, as well as the new funding standards.

This provision (requiring the described study by the Ways and Means Committee) would take effect upon the date of enactment of the committee bill. The provision calls for the committee's recommendations stemming from the study to be submitted to the House not later than December 31, 1976.

9. RETROACTIVE REMEDIAL CHANGES TO QUALIFIED PLANS

Employers may now retroactively cure defects in employee benefit plans (which do not meet the requirements for tax qualification) by making remedial amendments by the 15th day of the third month after the end of the taxable year of the employer in which a plan is newly established. Retroactive remedial changes however may not be made with respect to plan amendments.

The time allowed for remedial changes may be too short for a plan to be cured to qualify as of the year in which it is established. This occurs because many plans are established at the end of the year and thus only 2½ months are available to cure a plan. Additionally, plan amendments (which may be as significant as newly established plans) may not be retroactively cured. As a result of these limitations, plans may not be qualified, to the detriment of employers and employees.

The bill provides that retroactive remedial amendments may be adopted to cure a plan regardless of whether failure occurs on establishing a new plan or because of an amendment to an existing plan. The bill also extends the time to adopt a retroactive remedial amendment to the time (including extensions) for filing the employer's return for the taxable year for which the plan or amendment was adopted or put into effect, or to a later time designated by the Service. It is expected that the regulations will provide for extension for reasonable cause, such as the filing of a bona fide request for a determination by the Service that a plan or plan amendment is qualified.

This provision is to become effective on the date of enactment.

10. RULES FOR CERTAIN NEGOTIATED PLANS

Present law

Under present law, special rules are provided for contributions paid by an employer to a plan providing welfare and pension benefits if the plan was established before 1954 as a result of an agreement between a union and the Government during a period of Government operation of the major part of the productive facilities of the industry in which the employer is engaged (sec. 404(c)). Under this provision, contributions are not deductible under the deferred compensation provisions of the code but are deductible solely under section 162 as trade or business expenses. Present law also provides that this provision is to have no effect with respect to contributions to a trust on or after any date on which the trust is exempt from tax under section 501(a).

General reasons for change

This provision was enacted in recognition of the special circumstances surrounding the establishment of the United Mine Workers Welfare and Pension Plan Trust, i.e., the fact that the plan was negotiated during a period that the U.S. Government was a party to the agreement establishing the plan and was in control of a substantial number of the coal mines in the country.

It has been called to the committee's attention that changes in the coal mining industry and in the administration of the welfare and

pension trust have made it desirable to establish two separate trusts—one for the payment of welfare benefits and the second for the payment of retirement benefits. Your committee believes that this is a desirable objective and that the pension trust should be allowed to satisfy the requirements for qualification of pension plans in order to obtain the favorable tax benefits associated therewith. Of course, the plan would also have to meet the standards relating to coverage, vesting and funding provided in this bill.

Your committee is aware that a number of recent court cases have required the coverage and payment of pension benefits to individuals whose participation in a qualified pension plan would cause the pension plan to be disqualified. Accordingly, your committee believes that rules should be provided so that the pension plan may qualify without forcing the plan administrator to relitigate issues which have been resolved by the courts.

Explanation of provision

In order to facilitate the restructuring of the welfare and pension plan into two separate plans, your committee's bill provides special rules in the case of any individual who, before July 1, 1974, was a participant in the United Mine Workers Plan. First, an individual who was self-employed (within the meaning of sec. 401(c)(1)) such as a coal hauler is to be treated with respect to his service under the plan as not a self-employed individual but as an employee of a participating employer under the plan. This provision will enable the plan to meet the requirement of being a plan of an employer for the exclusive benefit of his employees with respect to certain self-employed individuals who have traditionally been covered under the plan. Second, in order to be certain that the self-employed individuals covered under the plan do not establish separate H.R. 10 plans on their own behalf, the bill provides that earnings derived from service covered by the plan are not to be treated as being earned income (within the meaning of sec. 401(c)(2)). Third, an individual who was a participant before July 1, 1974, is to be treated as an employee of a participating employer under the plan for service covered under the plan before July 1, 1975. This provision is designed to enable non-participating employers whose employees were covered under the plan to agree to become participating employers and thus maintain coverage for their employees. Of course, individuals who retire prior to July 1, 1975, are to be treated as if they were employed by a participating employer even though the employer does not agree to become a participating employer or if the employer is no longer in existence.

The bill further provides that section 277 (relating to deductions incurred by certain membership organizations in transactions with members) is not to apply to any trust described in section 404(c). This provision is added to enable the welfare trust to pay benefits to members and deduct the payments from any investment income it may have. Since questions have been raised as to the scope of section 277, your committee concluded that it could not wait until resolution of this issue because it is felt that there is great urgency for the Mine Workers to make the desired changes in their Welfare and Pension Plan. Your committee's decision is not to be construed as any indication as to the

scope of section 277 and its applicability to other non-exempt trusts which may be paying similar types of benefits to its members. Similarly, it is not to be construed to furnish any indication regarding the applicability of section 277 to the United Mine Workers plan prior to the effective date of the new provision. Instead, this decision should be viewed as a further attempt to effectuate the policy which led the Congress to enact section 404(c).

Since the desire of the United Mine Workers is to establish the pension plan as a qualified plan under section 401(a), the bill provides that section 404(c) is not to apply to the pension plan once it becomes a qualified plan except for the purpose of determining which individuals are to be treated as employees of a participating employer under the plan.

Effective date

The amendments made by this section of the bill are to apply to taxable years ending on or after June 30, 1972.

V. EFFECT ON REVENUES OF THE BILL AND VOTE OF THE COMMITTEE IN REPORTING THE BILL

In compliance with clause 7 of rule XIII of the Rules of the House of Representatives, the following statement is made relative to the effect on revenues of this bill. Apart from the revenue effect of the minimum vesting and funding provisions, the bill is expected to decrease revenues by about $460 million a year after the provisions become fully effective (approximately 3 years in the future) but at 1973 levels of income. The new minimum vesting standards could involve a revenue loss of possibly as much as $265 million a year after 1975 but probably the revenue loss will be only about half this amount. Data are not available which would make a reliable estimate as to the revenue impact of the new minimum funding requirements. It is believed, however, that the revenue effect in this case will be relatively modest. The Treasury Department agrees with this statement.

In compliance with clause 27(b) of rule XI of the Rules of the House of Representatives, the following statement is made relative to the vote by the committee on the motion to report the bill. The bill was ordered reported by a voice vote.

VI. SUPPLEMENTAL VIEWS OF HON. JAMES C. CORMAN AND HON. SAM GIBBONS

We share the hope and expectation of the other Ways and Means Committee members that H.R. 12481 will provide real protection for the pension rights of working Americans. Further, we hope this bill will place some limits on the amount of money which can be set aside for retirement, with special tax treatment, by high-income persons.

However, we would be remiss if we did not point out that this legislation is by no means the final answer to the vast array of issues relating to the pension system. In fact, there is a great and pressing need

for further action in such areas as these: (1) placing additional limits on the use of pension and profit-sharing plans as tax shelters, and (2) reassessing the relation of the social security system to the private pension system and the costs and benefits of the Government roles in each one.

COSTS AND BENEFITS

Each year the Federal Government loses about $4 billion in tax revenues because of the special tax treatment which is allowed for pension, profit sharing, and related plans designed to provide Americans with retirement benefits.

These tax benefits are intended basically to induce corporations, including professional organizations, and other businesses to set up retirement plans for their employees.

However, Mr. Frederic Hickman, Assistant Secretary of the Treasury for Tax Policy, admits that pension and profit-sharing plans have in fact become "the quintessential tax shelter." He calculates that the upper 8 percent of workers (including executives) receive 50 percent of the tax benefits involved, while the bottom 50 percent of wage earners receive only 6 percent of the benefits.

Mr. Hickman also indicates that the tax shelter features of these retirement plans are particularly valuable to higher income persons, who would normally pay high rates of income tax.

Following is a chart (chart 1) that indicates how important tax benefits are in the formation of a pension.

CHART 1

Tax Subsidy Element in Pensions
(ALL IN CONSTANT DOLLARS)

IF THE EMPLOYER CONTRIBUTES 15% OF SALARY

	EXECUTIVE		EMPLOYEE	
	WITH TAX BENEFITS	WITHOUT TAX BENEFITS	WITH TAX BENEFITS	WITHOUT TAX BENEFITS
STARTING TAXABLE SALARY	$ 30,000	$ 34,500	$ 10,000	$ 11,500
ENDING TAXABLE SALARY	100,000	115,000	18,000	20,700
AFTER-TAX PENSION	25,990	12,312	8,005	5,765
"TAX SUBSIDY"	53%		28%	

Assumptions: Participation age 35 to age 65; 6% interest; 2½% inflation; joint returns; executive has outside income equal to deductions.

Prepared by the Treasury Department.

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Obviously, the $4 billion a year which is lost in pension-related tax breaks must be made up by increased tax burdens on other taxpayers. It should also be noted that the coverage of pension plans extends to only something like 42 percent of the private, nonfarm work force, so that many workers receive no benefit at all from these tax losses to the Government.

It's clear that one of the greatest reasons for excessive executive salaries is the tax avoidance which can be managed by earmarking large portions of these salaries for pension or profit-sharing plans. With some executive salaries hovering at the $100.000 to $300,000 level, it's easy to see why these executives put up such a strong resistance to any limitation on tax deductible contributions to their pension funds.

This is an area ripe for immedate remedy.

There is absolutely no justification for as generous a limit on these tax deductible contributions as is contained in H.R. 12481. No candidate for public office could possibly defend the U.S. Government for subsidizing a $75,000 a year pension for corporate executives, and we certainly should not be enacting laws that we cannot defend in public.

Unfortunately, a motion to reduce this limitation to the still-generous sum of $60,000 a year lost in committee on a rollcall vote of 14 nays to 9 yeas.

Another effect of our special tax treatment of retirement plans is to create a huge reserve of investment assets which operate outside of our tax system. The book value of these assets was $154 billion in 1972. By 1980, their value is expected to increase to $225 billion. The implications of this fact for our economy, especially for our stock market and our capital markets, should not be taken lightly.

It is essential that we monitor the effects of H.R. 12481, including the results of our tax incentives to pension plans, very closely. Careful analysis of the costs and benefits of this legislation is needed if we are to be able to judge the prudence of our efforts in this area. Also, we should be especially sensitive to any Federal measures which may prove unduly hard on small businesses or may further aggravate the trend toward bigness and concentration in our economy.

In addition, if we are to continue to use our tax system to subsidize private pension benefits, we'll need a lot more progress in distributing the tax benefits involved more equitably among all workers.

It is claimed that the new individual retirement account provided for in this bill will advance us toward this goal. This new creation should be watched very carefully to see whether it will in fact benefit low- and middle-income workers without pension plan protection—or whether it will become another tax shelter for those with high incomes who are well able to provide for their retirement without any additional help from the Federal Government.

We look forward to further consideration of the tax issues relating to pension reform when the committee takes up tax issues in the near future.

THE ROLE OF SOCIAL SECURITY

It became clear during the committee's consideration of H.R. 12481 that sufficient thought had not been given to the respective roles that will be played in the future by the social security and the private pension systems in providing retirement income security for working Americans. This is a general problem in that further decisions are going to have to be made on how Federal tax dollars, or tax benefits, can best be used for this purpose, if they are to be so used.

The committee did not take action on the thorny issue of "integration," but instead postponed further consideration of the problems of fairness which are involved until social security issues are taken up later in the year. It cannot be stressed too strongly that remedial action is needed in this area.

Integration is a particularly disturbing equity problem. Often involved are the attempts of those in charge of pension plans to exclude from the coverage of these plans those who earn less than the social security wage base—which is now $13,200 a year.

Chart 2 illustrates how integration can be used to eliminate or drastically reduce the private pension base for lower paid employees.

CHART 2

INTEGRATION

Private pension and profit sharing plans may be confined to wages above the social security base.

Employee	Salary	Less S. S. Base	Private Pension Base
A	$ 8,000	$ 10,800	$ -0-
B	12,000	10,800	1,200
C	130,000	10,800	119,200

Prepared by the Treasury Department. (*1973 social security wage base was used.*)

Chart 3 shows how integration affects the amount of employer contributions to a pension plan.

CHART 3

INTEGRATION

Private pension and profit-sharing plans may be confined to wages above the social security base.

		CONTRIBUTIONS 5% Money Purchase Plan	
Employee	Salary	Without Integration	With Integration
A	$ 8,000	$ 400	$ -0-
B	12,000	600	75
C	130,000	6,500	7,425
		$ 7,500	$ 7,500

Prepared by the Treasury Department (December 1973).

Admittedly, the social security system provides basic retirement benefits for American workers. However, well over half of the work force makes less than $13,200 a year. If the purpose of our special tax benefits for pension plans is to induce businesses to operate pension plans for the benefit of their employees, is it appropriate to provide these full generous tax benefits to those who exclude their lowest paid employees from the protection of their pension plans—while reaping the tax benefits involved for themselves?

Should taxpayers be called upon to finance increased social security benefits to keep up with inflation and also be made to bear the tax loss which results from our special tax treatment for such "integrated" pension plans?

Studies by the Joint Economic Committee have shown that it is sometimes the person who pays the least in social security taxes who gets the most favorable treatment under present social security formulas. In view of this double inequity, it is time that Congress stopped letting the Internal Revenue Service regulate "integration" and made a thorough investigation of the problem. We look forward to early action by the Ways and Means Committee on this.

JAMES C. CORMAN.
SAM M. GIBBONS.

[From the Congressional Record—House, Feb. 20, 1974]

PERMISSION FOR COMMITTEE ON WAYS AND MEANS TO HAVE UNTIL MIDNIGHT, FEBRUARY 21, TO FILE REPORT ON H.R. 12855, AMENDING INTERNAL REVENUE CODE TO PROVIDE PENSION REFORM

Mr. ULLMAN. Mr. Speaker, I ask unanimous consent that the Committee on Ways and Means may have until midnight Thursday, February 21, 1974 to file a report on the bill, H.R. 12855, to amend the Internal Revenue Code of 1954 to provide pension reform, along with any separate and/or supplemental views.

The SPEAKER. Is there objection to the request of the gentleman from Oregon?

There was no objection.

PUBLIC BILLS AND RESOLUTIONS

Under clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

* * * * * * *

By Mr. DENT:

H.R. 12906. A bill to revise the Welfare and Pension Plans Disclosure Act; to the Committee on Education and Labor.

* * * * * * *

[The full text of H.R. 12906 as introduced follows:]

93D CONGRESS
2D SESSION

H. R. 12906

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 20, 1974

Mr. DENT introduced the following bill; which was referred to the Committee on Education and Labor

A BILL

To revise the Welfare and Pension Plans Disclosure Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE AND TABLE OF CONTENTS

SECTION 1. This Act may be cited as the "Employee Benefit Security Act of 1974".

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Subtitle A—Policy; Definitions

FINDINGS AND DECLARATION OF POLICY

SEC. 2. (a) The Congress finds that the growth in size, scope, and numbers of employee benefit plans in recent years has been rapid and substantial; that the operational scope and economic impact of such plans is increasingly interstate; that the continued well-being and security of millions of employees and their dependents are directly affected by these plans; that they are affected with a national public interest; that they have become an important factor affecting the stability of employment and the successful development of industrial relations; that they have become an important factor in commerce because of the interstate character of their activities, and of the activities of their participants, and the employers, employee organizations, and other entities

by which they are established or maintained; that a large volume of the activities carried on by such plans are affected by means of the mails and instrumentalities of interstate commerce; that owing to the lack of employee information and adequate safeguards concerning their operation, it is desirable in the interests of employees and their beneficiaries, and to provide for the general welfare and the free flow of commerce, that disclosure be made and safeguards be provided with respect to the establishment, operation, and administration of such plans; that they substantially affect the revenues of the United States because they are afforded preferential Federal tax treatment; that despite the enormous growth in such plans many employees with long years of employment are losing anticipated retirement benefits owing to the lack of vesting provisions in such plans; that owing to the inadequacy of current minimum standards, the soundness and stability of plans with respect to adequate funds to pay promised benefits may be endangered; that owing to the involuntary termination of plans before requisite funds have been accumulated, employees and their dependents have been deprived of anticipated benefits; and that it is therefore desirable in the interests of employees and their beneficiaries, for the protection of the revenue of

the United States, and to provide for the free flow of commerce, that minimum standards be provided assuring the equitable character of such plans and their financial soundness.

(b) It is hereby declared to be the policy of this title to protect interstate commerce and the interests of participants in employee benefit plans and their beneficiaries, by requiring the disclosure and reporting to participants and beneficiaries of financial and other information with respect thereto, by establishing standards of fiduciary conduct, responsibility, and obligation upon all persons who exercise any powers of control, management, or disposition with respect to employee benefit funds or have authority or responsibility to do so, or have authority or responsibility in the administration of employee benefit plans, and by providing for appropriate remedies, sanctions, and ready access to the Federal courts.

(c) It is hereby further declared to be the policy of this title to protect interstate commerce, the Federal taxing power, and the interests of participants in private pension plans and their beneficiaries by improving the equitable character and the soundness of such plans by requiring them to vest the accrued benefits of employees with significant pe-

riods of service, to meet minimum standards of funding, and by requiring plan termination insurance.

DEFINITIONS

SEC. 3. For purposes of this title:

(1) The term "employee welfare benefit plan" means any plan, fund, or program which is communicated or its benefits described in writing to the employees, and which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, for the purpose of (A) providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment, or vacation benefits, apprenticeship or other training programs, or day care centers, scholarship funds, or prepaid legal services, or (B) in the case of a fund subject to the restrictions of section 302 (c) of the Labor Management Relations Act, 1947, providing any other benefit which may be permitted by section 302 (c) (5), 302 (c) (6), or 302 (c) (7) of that Act.

(2) The term "employee pension benefit plan" or "pension plan" means any plan, fund, or program which is communicated or its benefits described in writing to the employees, and which was heretofore or is hereafter established

or maintained by an employer or by an employee organization, or by both, if by its express terms or as a result of surrounding circumstances such plan, fund, or program results in a deferral of income by participants for periods, extending to the termination of participation or beyond, regardless of the method of calculating the contributions made to the plan, the method of calculating the benefits under the plan or the method of distributing benefits from the plan.

(3) The term "employee benefit plan" or "plan" means an employee welfare benefit plan or an employee pension benefit plan or a plan providing both welfare and pension benefits.

(4) The term "employee organization" means any labor union or any organization of any kind, or any agency or employee representation committee, association, group, or plan, in which employees participate and which exists for the purpose in whole or in part, of dealing with employers concerning an employee benefit plan, or other matters incidental to employment relationships; or any employees' beneficiary association organized for the purpose, in whole or in part, of establishing such a plan.

(5) The term "employer" means any person acting directly as an employer or indirectly in the interest of an employer in relation to an employee benefit plan, and in-

cludes a group or association of employers acting for an employer in such capacity.

(6) The term "employee" means any individual employed by an employer.

(7) The term "participant" means any employee or former employee of an employer or any member or former member of an employee organization who is or may become eligible to receive a benefit of any type from an employee benefit plan which covers employees of such employer or members of such organization, or whose beneficaries may be eligible to receive any such benefit.

(8) The term "beneficiary" means a person designated by a participant or by the terms of an employee benefit plan who is or may become entitled to a benefit thereunder.

(9) The term "person" means an individual, partnership, corporation, mutual company, joint-stock company, trust, unincorporated organization, association, or employee organization.

(10) The term "State" includes any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, and the Canal Zone. The term "United States" when used in the geographic sense means the States and the Outer Conti-

nental Shelf lands defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331–1343).

(11) The term "commerce" means trade, traffic, commerce, transportation, or communication between any State and any place outside thereof.

(12) The term "industry or activity affecting commerce" means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce and includes any activity or industry "affecting commerce" within the meaning of the Labor Management Relations Act, 1947, or the Railway Labor Act.

(13) The term "Secretary" means the Secretary of Labor.

(14) The term "party in interest" means any administrator, officer, fiduciary, trustee, custodian, counsel, or employee of any employee benefit plan, or a person providing benefit plan services to any such plan, or an employer any of whose employees are covered by such a plan or any person controlling, controlled by, or under common control with, such employer or officer or employee or agent of such employer or such person, or an employee organization having members covered by such plan, or an officer or employee or agent of such an employee organization having members

covered by such plan, or a relative or partner of, or joint venturer with, any of the above described persons.

(15) The term "relative" means a spouse, ancestor, child, grandchild, brother, sister, son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law.

(16) Except as used in section 111, the term "administrator" means—

(A) the person specifically so designated by the terms of the plan, collective-bargaining agreement, trust agreement, contract, or other instrument, under which the plan is operated; or

(B) in the absence of such designation, (i) the employer in the case of an employee benefit plan established or maintained by a single employer, (ii) the employee organization in the case of a plan established or maintained by an employee organization, (iii) the association, committee, joint board of trustees, or other similar group of representatives of the parties who established or maintain the plan, in the case of a plan established or maintained by two or more employers or jointly by one or more employers and one or more employee organizations, or (iv) in any case to which

clause (i), (ii), or (iii) does not apply, such other person as the Secretary may prescribe.

For purposes of section 111, the term "administrator" means a person described in subparagraph (A) or (B) (i), (ii), or (iii), or any person who under the terms of the plan has been expressly given the authority to amend the terms of the plan or the authority to compel action under the terms of the plan on the part of any person named in subparagraph (A) or (B) (i), (ii), or (iii).

(17) The term "separate account" means an account established or maintained by an insurance company under which income, gains, and losses, whether or not realized, from assets allocated to such account, are, in accordance with the applicable contract, credited to or charged against such account without regard to other income, gains, or losses of the insurance company.

(18) The term "adequate consideration" when used in section 111 means (A) in the case of a security for which there is a generally recognized market, either (i) the price of the security prevailing on a national securities exchange which is registered under section 6 of the Securities Exchange Act of 1934, or (ii) if the security is not traded on such a national securities exchange, a price not less favorable to the plan than the offering price for the security as established by the current bid and asked prices quoted by

persons independent of the issuer and of any party in interest; and (B) in the case of an asset other than a security for which there is a generally recognized market, the fair market value of the asset as determined, in good faith by the trustee or administrator pursuant to the terms of the plan.

(19) The term "nonforfeitable" when used with respect to a pension benefit or right means a claim obtained by a participant or his beneficiary to that part of an immediate or deferred pension benefit, which arises from the participant's service, which is unconditional, and which is legally enforceable against the plan under State or Federal law. For purposes of this paragraph, a right to an accrued benefit derived from employer contributions shall not be treated as forfeitable merely because the plan provides that it is not payable where the participant dies (except in the case of a qualified joint and survivor annuity as provided in section 204 (c)); that payment of benefits is suspended during periods when the participant has resumed employment with the employer (or, in the case of a multiemployer plan, has resumed employment in the industry before normal retirement age) ; or that plan amendments may be given retroactive application as provided in section 203 (f) or pursuant to section 501 of this Act.

(20) The term "security" has the same meaning as

such term has under section 2 (1) of the Securities Act of 1933 (15 U.S.C. 77b (1)).

(21) (A) Except as otherwise provided in subparagraph (B), a person is a fiduciary with respect to a plan to the extent (i) he exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets, (ii) he renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan, or has any authority or responsibility to do so, or (iii) he has any discretionary authority or discretionary responsibility in the administration of such plan.

(B) If any money or other property of an employee benefit plan is invested in shares of an investment company registered under the Investment Company Act of 1940, such investment shall not by itself cause such investment company or such investment company's investment adviser or principal underwriter to be deemed to be a "fiduciary" or a "party in interest" as those terms are defined in this title, except insofar as such investment company or its investment adviser or principal underwriter acts in connection with an employee benefit plan covering employees of the investment company, the investment adviser, or its principal underwriter. Nothing contained in this subparagraph shall

limit the duties imposed on such investment company, investment adviser, or principal underwriter by any other law.

(22) The term "regular retirement benefit" means only that benefit payable under a pension plan at the normal retirement age in the event of service or age related retirement and excludes other benefits related to participant disability or plan termination.

(23) The term "accrued benefit" means—

(A) in the case of a defined benefit plan, the individual's accrued benefit determined under the plan and, except as provided in section 205 (d) (3), expressed in the form of an annual benefit commencing at normal retirement age, or

(B) in the case of a plan which is an individual account plan, the balance of the individual's account.

(24) The term "normal retirement age" means the earlier of—

(A) the time a plan participant attains normal retirement age under the plan, or

(B) the later of—

(i) the time a plan participant attains age 65, or

(ii) the time a plan participant has completed 10 years of participation in the plan.

(25) The term "vested liabilities" means the present

value of the immediate or deferred benefits available at regular retirement age for participants and their beneficiaries which are nonforfeitable.

(26) The term "current value" means fair market value where available and otherwise the fair value as determined in good faith by the trustee or administrator, assuming an orderly liquidation as of the statement date.

(27) The term "present value", with respect to a liability, means the value adjusted to reflect anticipated events. Such adjustments shall conform to such rules and regulations as the Secretary may provide.

(28) The term "normal service cost" or "normal cost" means the annual cost of future pension benefits and administrative expenses assigned, under an actuarial cost method, to years subsequent to a particular valuation date of a pension plan.

(29) The term "present value of an annuity certain" means the single sum required to pay $1 monthly annually for "N" years, assuming interest is earned at the rate "i" per annum, which term may be expressed algebraically as follows:

$$1+\left(\frac{1}{1+i}\right)+\left(\frac{1}{1+i}\right)^2+\left(\frac{1}{1+i}\right)^3+\ .\ .\ .\ +\left(\frac{1}{1+i}\right)^{N-1}.$$

(30) The term "accrued liability" means the excess of the present value, as of a particular valuation date of a pension plan, of the projected future benefit costs and adminis-

trative expenses for all plan participants and beneficiaries over the present value of future contributions for the normal cost of all applicable plan participants and beneficiaries.

(31) The term "unfunded accrued liability" means the excess of the accrued liability, under an actuarial cost method which so provides, over the present value of the assets of a pension plan.

(32) The term "advance funding actuarial cost method" or "actuarial cost method" means a recognized actuarial technique utilized for establishing the amount and incidence of the annual actuarial cost of pension plan benefits and expenses. Acceptable actuarial cost methods shall include the accrued benefit cost method (unit credit method), the entry age normal cost method, the individual level premium cost method, the aggregate cost method, the attained age normal cost method, and the frozen initial liability cost method. The terminal funding cost method and the current funding (pay-as-you-go) cost method are not acceptable actuarial cost methods. The Secretary shall issue regulations to further define acceptable actuarial cost methods. Regulations for purposes of this paragraph, paragraph (27), and paragraph (38) shall be effective for a plan year beginning after December 31, 1975, only if approved by the Secretary of the Treasury.

(33) The term "governmental plan" means a plan established and maintained for its employees by the Government of the United States, by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing. The term "governmental plan" also includes any plan to which the Railroad Retirement Act of 1935 or 1937 applies, and which is financed by contributions required under that Act.

(34) (A) Except as provided in subparagraphs (B) and (C), the term "church plan" means a plan established and maintained by a church or by a convention or association of churches which is exempt from tax under section 501 of the Internal Revenue Code of 1954.

(B) The term "church plan" does not include a plan—

(i) which is established and maintained primarily for the benefit of employees (or their beneficiaries) of such church or convention or association of churches who are employed in connection with one or more unrelated trades or businesses (within the meaning of section 513 of the Internal Revenue Code of 1954), or

(ii) which is a multiemployer plan, if one or more of the employers in the plan is not a church (or a convention or association of churches) which is exempt from tax under section 501 of the Internal Revenue Code of 1954.

(C) For purposes of this paragraph, if—

(i) a plan described in subparagraph (A) was in existence on January 1, 1974, and

(ii) such plan on such date covered employees of any organization which is exempt from tax under section 501 of the Internal Revenue Code of 1954 and which is an agency of the church or convention or association of churches which established and maintained the plan,

then the employees of such agency who are at any time covered by such plan shall be treated as employees whose employer is such church or convention or association of churches, as the case may be.

(35) The term "individual account plan" means a pension plan which provides for an individual account for each participant and for benefits based solely upon the amount contributed to the participant's account, and any income, expenses, gains and losses, and any forfeitures of accounts of other participants which may be allocated to such participant's account.

(36) The term "defined benefit plan" means a pension plan other than an individual account plan.

(37) The term "supplementary plan" means a pension plan which covers only participants each of whom is covered by one or more primary plans to which parts 2 and 3 of

subtitle B of this title apply. For purposes of this paragraph, the term "primary plan" means a pension plan which is designed to provide a life annuity (or equivalent annuity) as determined by the Secretary, which commences not later than age 65 and which provides an annual benefit (or the equivalent) in an amount not less than 2.0 percent of the final five-year average annual compensation for the participant times the number of his years of covered service (determined under regulations of the Secretary).

(38) (A) The term "multiemployer plan" means a plan—

(i) to which more than one employer is required to contribute,

(ii) which is maintained pursuant to a collective bargaining agreement between employee representatives and more than one employer,

(iii) under which the amount of contributions made under the plan for a plan year by each employer making such contributions is less than 50 percent of the aggregate amount of contributions made under the plan for that plan year by all employers making such contributions, and

(iv) which satisfies such other requirements as the Secretary may by regulations prescribe.

(B) For purposes of this paragraph—

(i) If a plan is a multiemployer plan within the meaning of subparagraph (A) for any plan year, clause (iii) of subparagraph (A) shall be applied by substituting "75 percent" for "50 percent" for each subsequent plan year until the first plan year following a plan year in which the plan had one employer who made contributions of 75 percent or more of the aggregate amount of contributions made under the plan for that plan year by all employers making such contributions.

(ii) All corporations which are members of a controlled group of corporations (within the meaning of section 1563 (a) of the Internal Revenue Code of 1954, determined without regard to section 1563 (e) (3) (C) of such Code) shall be deemed to be one employer.

(39) The term "investment manager" means any fiduciary (other than a trustee or administrator) who has the power to manage, acquire, or dispose of any asset of a plan and who—

(A) is registered as an investment adviser under the Investment Advisers Act of 1940; or is a bank, as defined in that Act, and

(B) has acknowledged in writing that he is a fiduciary with respect to the plan.

Subtitle B—Regulatory Provisions

Part 1—Fiduciary Responsibility and Disclosure

COVERAGE

Sec. 101. (a) Except as provided in subsection (b) this part shall apply to any employee benefit plan if it is established or maintained (1) by any employer engaged in commerce or in any industry or activity affecting commerce or (2) by any employee organization in which employees engaged in commerce or in any industry or activity affecting commerce participate or (3) by both.

(b) This part shall not apply to an employee benefit plan if—

(1) such plan is a governmental plan (as defined in section 3 (33);

(2) such plan is a church plan (as defined in section 3 (34)) with respect to which no election has been made under section 201 (c);

(3) such plan was established and is maintained solely for the purpose of complying with applicable workmen's compensation laws or unemployment compensation disability insurance laws;

(4) such plan is established and maintained outside the United States primarily for the benefit of persons who are not citizens of the United States, or

(5) such plan is unfunded and is maintained

by an employer primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees.

DUTY OF DISCLOSURE AND REPORTING

SEC. 102. (a) The administrator of an employe benefit plan shall cause to be published in accordance with section 105 to each participant or beneficiary covered thereunder (1) a description of the plan and (2) the information described in sections 105 (b) (3) and 106 (e). Such description and the annual report of the plan shall contain the information required by sections 103 and 104 of this Act, shall be published in accordance with section 105, and shall be in such form and detail as necessary to fully and fairly disclose all pertinent facts.

(b) The Secretary shall require the filing of special terminal reports respecting an employee pension benefit plan which is winding up its affairs, and he may require such a report respecting any employee welfare benefit plan which is winding up its affairs. Such reports shall be on such forms and filed in such manner as the Secretary may by regulation prescribe. A report respecting a pension plan shall be required to be filed regardless of the number of participants remaining in the plan.

(c) The Secretary may by regulation require that the administrator of any employee benefit plan furnish to each participant or his surviving beneficiary a statement of the

rights of participants and beneficiaries under this title.

DESCRIPTION OF THE PLAN

SEC. 103. (a) A description of any employee benefit plan shall be published as required herein within one hundred and twenty days after the establishment of such plan or within one hundred and twenty days after such plan becomes subject to the part, whichever is later.

(b) The description of the plan shall be comprehensive and shall be written in a manner calculated to be understood by the average plan participant and shall include the name and type of administration of the plan; the name and address of the administrator; names, titles, and addresses of any trustee or trustees (if they are persons different from the administrator); a description of any relevant collective-bargaining agreement in which the plan is mentioned; the plan's requirements respecting eligibility for participation and benefits; the schedule of benefits; a description of the provisions providing for nonforfeitable pension benefits; the source of the financing of the plan and the identity of any organization through which benefits are provided; whether the records of the plan are kept on a calendar year basis, or on a policy or other fiscal year basis, and if on the latter basis, the date of the end of such policy or fiscal year; the procedures to be followed in presenting claims for benefits under the plan and the remedies available under the plan for the redress of claims which are denied in whole or in

part. All amendments to the plan shall be included in the description on and after the effective date of such amendments.

ANNUAL REPORTS

SEC. 104. (a) (1) An annual report shall be published with respect to any employee benefit plan to which this part applies. Such report shall be published as required under section 105, within two hundred and seventy days after the end of the calendar, policy, or fiscal year on which the records of the plan are kept (hereafter in this title referred to as "plan year" or "fiscal year of the plan").

(2) If some or all of the benefits under the plan are provided by an insurance carrier or other organization, such carrier or organization shall certify to the administrator of such plan, within one hundred and eighty days after the end of the fiscal year of the plan, such information as is necessary to enable such administrator to comply with the requirements of this title. If some or all of the information necessary to enable the administrator to comply with the requirements of this title is maintained by one or more persons described in section 3 (16) (B) (i), (ii), or (iii), such person or persons shall transmit such information to the administrator within one hundred and eighty days after the end of the fiscal year of the plan.

(3) (A) Except as provided in subparagraph (B), the

administrator of an employee benefit plan shall engage, on behalf of all plan participants, an independent qualified public accountant, who shall conduct such an examination of the financial statements of the plan as he may deem necessary to enable him to form an opinion as to whether the financial statements required to be included in the annual report by subsection (b) of this section are presented fairly in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year. Such examination shall be conducted in accordance with generally accepted auditing standards, and shall involve such tests of the books and records of the plan as are considered necessary by the independent qualified public accountant. The independent qualified public accountant shall also submit a report as to whether the supplementary financial data specified in subsection (b) (3) of section 105 presents fairly in all material respects the information contained therein when considered in conjunction with the financial statements taken as a whole. The opinion by the independent qualified public accountant shall be made a part of the annual report.

(B) The opinion required by subparagraph (A) need not be expressed as to any statements prepared by a bank or similar institution or insurance carrier as required by subparagraph (G) of paragraph (b) (3) of this section if such statements are certified by the bank, similar institution, or

insurance carrier as accurate and are made a part of the annual report.

(C) For purposes of subparagraph (A) of this paragraph, section 105(a)(3), and section 114(a), the term "qualified public accountant" means—

(i) a person who is a certified public accountant, certified by a regulatory authority of a State,

(ii) a person who is a licensed public accountant, licensed on or before December 31, 1973, by a regulatory authority of a State, or

(iii) with respect to audits performed before January 1, 1976, any other person who meets, in the opinion of the Secretary, standards of education and experience which are representative of the highest prescribed by the licensing authorities of the several States which provide for the continuing licensing of public accountants and which are prescribed by the Secretary in appropriate regulations;

except that if the Secretary deems it necessary in the public interest, he may prescribe by regulation higher standards than those required for the practice of public accountancy by the regulatory authorities of the States, and a person shall be considered a qualified public accountant for purposes of subparagraph (A), section 105(a)(3), and section 114(a) only if he meets such standards.

(4) (A) The administrator of an employee benefit plan subject to the reporting requirement of subsection (d) of this section shall engage, on behalf of all plan participants, an enrolled actuary who shall supervise the computation of the "present value of accrued benefits" and "accrued benefits" required under subsection (b) (2) of this section and shall supervise the preparation of the materials comprising the actuarial statement required under subsections (d) and (g) of this section.

(B) The enrolled actuary shall utilize such assumptions and techniques as are necessary to enable him to form an opinion as to whether the contents of the matters reported under subsection (d) of this section—

(i) are reasonably related to the experience of the plan and to reasonable expectations; and

(ii) utilize assumptions which in combination, offer his single best estimate of anticipated experience under the plan.

The opinion by the enrolled actuary shall be made with respect to, and shall be made a part of, each annual report.

(C) For purposes of subparagraph (A) of this paragraph, section 105(a) (3), and section 114(a), the term "enrolled actuary" means an actuary enrolled under this subparagraph. The Secretary shall, by regulations, establish reasonable standards and qualifications for individuals per-

forming actuarial services described in subparagraph (A) and section 105(a)(3). Upon application by any individual, the Secretary shall enroll such individual if the Secretary finds that such individual satisfies such standards and qualifications. With respect to individuals applying for enrollment before January 1, 1976, such standards and qualifications shall include a requirement for an appropriate period of responsible actuarial experience or of responsible experience in the administration of pension plans. With respect to individuals applying for enrollment on or after January 1, 1976, such standards and qualifications shall include—

(i) education and training in actuarial mathematics and methodology, as evidenced by—

(I) a degree in actuarial mathematics or its equivalent from an accredited college or university, or

(II) successful completion of an examination in actuarial mathematics and methodology to be given by the Secretary, or

(III) successful completion of other actuarial examinations deemed adequate by the Secretary, and

(ii) an appropriate period of responsible actuarial experience.

The Secretary may, after notice and an opportunity for a hearing, suspend or terminate the enrollment of an individual under this subparagraph if the Secretary finds that such individual does not satisfy the requirements for enrollment which were in effect at the time of his application for enrollment. Regulations prescribed for purposes of this subparagraph shall be effective after December 31, 1975, only if approved by the Secretary of the Treasury.

(b) A report under this section shall include a financial statement containing the following information:

(1) With respect to an employee welfare benefit plan: a statement of assets and liabilities; a statement of revenues and expenses for the period aggregated by general sources and applications; a statement of changes in fund balance; and a statement of changes in financial position. In the notes to financial statements, disclosures concerning the following items shall be considered by the accountant: a description of the plan including any significant changes in the plan made during the period and the impact of such changes on benefits; a description of material lease commitments and contingent liabilities; a description of agreements and transactions with persons known to be parties in interest; a general description of priorities upon termination of the plan; information concerning whether or not a tax ruling or determination letter has been obtained; and any other matters necessary to fairly

present the financial statements of a particular welfare benefit fund.

(2) With respect to an employee pension benefit plan: a statement of assets and liabilities including with respect to any employee benefit plan subject to the reporting requirements of subsection (d) of this section the estimated actuarially determined present value of accrued benefits to be paid under the plan as calculated by an enrolled actuary and aggregated by the termination distribution categories enumerated in section 112; and a statement of changes in net assets available for plan benefits which shall include details of revenues and expenses and other changes aggregated by general source and application. In the notes to financial statements, disclosures concerning the following items shall be considered by the accountant: a description of the plan including any significant changes in the plan made during the period; the funding policy (including policy with respect to prior service cost), and any changes in such policies during the year; the most recent valuation date used to compute the present value of accrued benefits and the actuarial cost methods and assumptions; a description of any significant changes in plan benefits made during the period and the impact of such changes on the present value of accrued benefits; a description of material lease commitments, other commitments, and contingent liabilities; agreements and transactions with

persons known to be parties in interest; a general description of priorities upon termination of the plan; information concerning whether or not a tax ruling or determination letter has been obtained; and any other matters necessary to fully and fairly present the financial statements of a particular pension benefit fund.

(3) With respect to all employee benefit plans:

(A) a statement of the assets and liabilities of the fund aggregated by categories and valued at their current value, as well as the same data, displayed in comparative form for the end of the previous fiscal year of the plan;

(B) a statement of receipts and disbursements during the preceding twelve-month period aggregated by general sources and applications;

(C) a schedule of all assets held for investment purposes aggregated and identified by issuer, borrower, or lessor or similar party to the transaction, maturity date, rate of interest, collateral, par or maturity value, cost, and current value;

(D) a schedule of each transaction involving a person known to be party in interest, the identity of such party in interest and his relationship to the plan, employer, employee, or other person, a description of each asset to which the transaction relates; the purchase or selling price in case of a sale or purchase, the rental in

case of a lease, or the interest rate and maturity date in case of a loan; expenses incurred in connection with the transaction; the cost of the asset, the current value of the asset, and the net gain (or loss) on each transaction;

(E) a schedule of all loans made from the fund which were in default as of the close of the plan's fiscal year or were classified during the year as uncollectable and the following information with respect to each loan on such schedule: the original principal amount of the loan, the amount of principal and interest received during the reporting year, the unpaid balance, the identity and address of the obligor, a detailed description of the loan (including date of making and maturity, interest rate, the type and value of collateral, and other material terms), the amount of principal and interest overdue (if any) and an explanation thereof;

(F) a list of all leases which were in default or were classified during the year as uncollectable; and the following information with respect to each lease on such schedule: the type of property leased (and, in the case of fixed assets such as land, buildings, leasehold, and so forth, the location of the property), the identity of the lessor or lessee from or to whom the plan is leasing, the relationship of such lessors and lessees, if any, to the plan, the employer, employee organization, or any other

party in interest, the terms of the lease regarding rent, taxes, insurance, repairs, expenses, and renewal options; the date the leased property was purchased and its cost, the date the property was leased and its approximate value at such date, the gross rental receipts during the reporting period, expenses paid for the leased property during the reporting period, the net receipts from the lease, the amounts in arrears, and a statement as to what steps have been taken to collect amounts due or otherwise remedy the default;

(G) if some or all of the assets of a plan or plans are held in a common or collective trust maintained by a bank or similar institution or in a separate account maintained by an insurance carrier or a separate trust maintained by a bank as trustee, the report shall include the most recent annual statement of assets and liabilities of such common or collective trust, and in the case of a separate account or a separate trust, such other information as is required by the administrator in order to comply with this subsection. In such case the bank or similar institution or insurance carrier shall certify to the administrator of such plan or plans, within one hundred and eighty days after the end of each fiscal year of the plan the information necessary to enable the plan administrator to comply with the requirements of this part; and

(H) a schedule of each transaction (or transactions) involving an amount (or the aggregate amount resulting from multiple transactions with or in conjunction with a person during the plan year) which exceeds the lesser of $300,000 or 3 per centum of the value of the fund, the name of such person and a description of each asset to which the transaction applies; the purchase or selling price in case of a sale or purchase, the rental in case of a lease, or the interest rate and maturity date in case of a loan; expenses incurred in connection with the transaction; the cost of the asset, the current value of the asset, and the net gain (or loss) on each transaction.

(c) The administrator shall furnish as a part of report under this section the following information: the average number of employees covered by the plan; the name and address of each fiduciary; the name of each person who received compensation in excess of $5,000 from the fund during the preceding year for services rendered to the plan or its participants, the amount of such compensation, the nature of his services to the plan or its participants, his relationship to the employer of the employees covered by the plan, or the employee organization, and any other office, position, or employment he holds with any party in interest; and an explanation of the reason for any change in appoint-

ment of trustee, qualified public accountant, insurance carrier, actuary, administrator, investment manager, or custodian.

(d) With respect to an employee pension benefit plan (other than (A) a profit sharing, savings, or other plan, which is an individual account plan, or (B) a plan described in section 301 (d)), a report under this section for a plan year to which part 2 or part 3 of this subtitle (or both) apply shall include an actuarial statement applicable to the plan year which shall include the following:

(1) The number of years the plan has been in effect, the date of the plan year, and the date of the actuarial valuation applicable to the plan year for which the report is filed. An actuarial valuation shall be made no less frequently than every three years.

(2) The date and amount of the contribution (or contributions) made by the plan for the plan year for which the report is filed and contributions for prior plan years not previously reported.

(3) A complete copy of the actuarial report, including the following information applicable to the plan year for which the report is filed: the amount of the minimum contribution, the normal costs, accrued liabilities, present value of accrued nonforfeitable benefits; value of assets; an identification of benefits not included in the calcula-

tions; and a statement of the other facts and actuarial assumptions used in the calculation of the minimum contribution required under section 302 and a justification for any change in actuarial assumptions or cost methods.

(4) The number of participants and beneficiaries, both retired and nonretired covered by the plan.

(5) The current value of the assets accumulated in the fund, and the present value of the assets of the plan used by the actuary in any computation of the amount of contributions to the plan required under section 302 and a statement explaining the basis of such asset valuation.

(6) The present value of all of the plan's liabilities for nonforfeitable pension benefits allocated by the termination prority categories as set forth in section 112 (b); and the actuarial assumptions used in these computations. The Secretary shall establish regulations defining (for purposes of this section) "termination priority categories" and acceptable methods, including approximate methods, for allocating the plan's liabilities to such termination priority categories.

(7) The ratio of (A) the current value of the assets (as set forth in paragraph (5)) allocated to each termination priority category as set forth in section 112 (b)

to (B) the liabilities (as set forth in paragraph (6)) allocated to each such termination priority category.

(8) In the case of a plan to which section 302 applies a statement of the amount, if any, by which the aggregate contributions made since section 302 first applied to the plan either exceed or fall below the aggregate contributions required in order for the plan to meet the funding requirements of section 302.

(9) A copy of the opinion required by subsection (a) (4).

(10) Such other information as may be necessary to fully and fairly disclose the actuarial positions of the fund.

The actuary shall make an actuarial valuation of the plan for every third plan year, unless he determines that a more frequent valuation is necessary to support his opinion under subsection (a) (4) of this section.

(e) If some or all of the benefits under the plan are purchased from and guaranteed by an insurance company, a report under this section shall include a statement from such insurance company covering the fiscal year and enumerating—

(1) total premiums received from the plan;

(2) the amount paid in the form of benefits;

(3) the amount charged on account of administrative expense;

(4) the amount of any commissions or any other acquisition costs paid by the insurance company and to whom paid; and

(5) the amount held to pay future benefits.

(f) If the only assets from which claims against an employee benefit plan may be paid are the general assets of an employer or an employee organization, the report shall include (for each of the past five years) the benefits paid and the average number of employees eligible for participation.

(g) In the event of termination of any employee pension benefit plan the annual report of such plan for the year shall include any supplementary information required to be filed with the Secretary by section 102(b).

PUBLICATION

SEC. 105. (a)(1) The administrator of any employee benefit plan subject to this part shall, within 270 days after the close of each fiscal year of the plan, file with the Secretary a copy of the plan description and each annual report. The Secretary shall make copies of such descriptions and annual reports available for inspection in the public document room of the Department of Labor. The Secretary—

(A) shall exempt from the annual filing require

ment of this paragraph any employee benefit plan with fewer than twenty-six participants,

(B) may exempt from such filing requirement any other class or type of employee benefit plan with fewer than one hundred participants, if the Secretary finds that the application of such requirement to such other plans is not required to implement the purposes of this title, and

(C) may by regulation, as to any class or type of employee welfare benefit plan, grant an exemption from all or part of the reporting, disclosure, and publication requirements of this part.

(2) The Secretary may reject any filing under this section:

(A) after notice, hearing, and a determination on the record by the Secretary that such filing is incomplete for purposes of this part; or

(B) if he finds, after notice and opportunity for presentation of views, that there is any material qualification by an accountant or actuary contained in an opinion submitted pursuant to section 104 (a) (3) (A) or section 104 (a) (4) (B).

(3) If the Secretary rejects a filing of a report under paragraph (2), if a revised report satisfactory to the Secretary is not submitted within forty-five days after the Secretary

makes his determination under paragraph (2) to reject the filing, and if the Secretary deems it in the best interest of the participants, he may take any one or more of the following actions:

(A) Retain an independent qualified public accountant (as defined in section 104(a)(3)(C)) on behalf of the participants to perform an audit.

(B) Retain an enrolled actuary (as defined in section 104(a)(4)(C) of this Act) to make an actuarial report.

(C) Bring a civil action for such legal or equitable relief as may be appropriate to account for or safeguard the assets of the plan.

The Administrator shall permit such accountant, auditor, or actuary to inspect whatever books and records of the plan are necessary for such audit. The plan shall be liable to the Secretary for the expenses for such audit or report; and the Secretary may bring an action against the plan in any court of competent jurisdiction to recover such expenses.

(b) Publication of the plan descriptions and annual reports required by this part shall be made to participants and beneficiaries of the particular plan as follows:

(1) The administrator shall furnish to each plan participant or his beneficiaries a copy of the plan descrip-

tion (including all amendments or modifications thereto). Such description shall be furnished—

(A) to a plan participant within thirty days after he commences covered employment (or in the case of a plan to which more than one employer is required to contribute, within ninety days after he commences covered employment), and

(B) to all plan participants at least once every five years.

If there is any material modification in the terms of the plan, a description of such modification shall be furnished not later than one year after the modification takes effect.

(2) The administrator shall make copies of the latest annual report (except the information described in sections 106(a) and (c)) and the bargaining agreement, trust agreement, contract, or other instruments under which the plan was established and is operated available for examination by any plan participant or beneficiary in the principal office of the administrator and in such other places as may be necessary to fully and fairly disclose all pertinent facts to all participants.

(3) Within two hundred and seventy days after the close of the fiscal year of the plan, the administrator shall furnish to each participant, or his beneficiaries, a copy of the statements and schedules, for such fiscal year, de-

scribed in subparagraphs (A) and (B) of paragraph 104 (b) (3) and paragraphs (5), (6), and (7) of subsection 104 (d), and such other material as is necessary to fairly summarize the latest annual report.

(4) The administrator shall, upon written request of any participant or beneficiary, furnish a complete copy of the latest annual report (except the information described in sections 106 (a) and (c)), the bargaining agreement, trust agreement, contract, or other instruments under which the plan is established and operated. The administrator may make a reasonable charge to cover the cost of furnishing such complete copies. The Secretary may by regulation prescribe the maximum amount which will constitute a reasonable amount under this paragraph.

REPORTING OF PARTICIPANT'S BENEFIT RIGHTS

SEC. 106. (a) Each pension plan which files a report under section 105 (a) for a plan year beginning after December 31, 1975, shall include in such report the following information:

(1) The name and social security number of each participant in the plan—

(A) who, during such plan year, separated from the service covered by the plan,

(B) who is entitled to a deferred nonforfeitable

benefit under the plan as of the end of such plan year, and

(C) with respect to whom retirement benefits were not paid under the plan during such plan year.

(2) The nature, amount, and form of the deferred nonforfeitable benefit to which such participant is entitled.

(3) Such other information as the Secretary may require.

At the time he files the information under this subsection, the administrator shall furnish evidence satisfactory to the Secretary that he has complied with the requirement contained in subsection (e).

(b) Any administrator required to submit information under subsection (a) shall also notify the Secretary, at such time as may be prescribed by regulations, of—

(1) any change in the name of the plan,

(2) any change in the name or address of the administrator,

(3) the termination of the plan, or

(4) the merger or consolidation of the plan with any other plan or its division into two or more plans.

(c) To the extent provided in regulations prescribed by

the Secretary, the Secretary may receive from—

(1) any plan to which subsection (a) applies, and

(2) any other plan (including any governmental plan or church plan),

such information (including information relating to plan years beginning before January 1, 1974) as the administrator may wish to file with respect to the deferred nonforfeitable benefit rights of any participant separated from the service covered by the plan during any plan year.

(d) The Secretary shall transmit copies of any statements, notifications, reports, or other information obtained by him under this section to the Secretary of Health, Education, and Welfare.

(e) Each plan administrator required to submit information under subsection (a) shall, before the expiration of the time prescribed for the filing of such information, also furnish to each participant described in subsection (a)(1) an individual statement setting forth the information with respect to such participant required to be contained in information submitted to the Secretary under subsection (a)(2).

(f)(1) The Secretary, after consultation with the Secretary of Health, Education, and Welfare, may prescribe such regulations as may be necessary to carry out the provisions of this section. Any such regulations shall be effective

with respect to plan years beginning after December 31, 1975, only if approved by the Secretary of the Treasury.

(2) This section shall apply to a plan to which more than one employer is required to contribute only to the extent provided in regulations prescribed under this subsection.

REPORTS MADE PUBLIC INFORMATION

SEC. 107. (a) Except as provided in subsection (b), the contents of the descriptions and reports filed with the Secretary pursuant to this part shall be public information, and the Secretary shall make any such information and data available for inspection in the public document room of the Department of Labor. The Secretary may use the information and data for statistical and research purposes, and compile and publish such studies, analyses, reports, and surveys based thereon as he may deem appropriate.

(b) Information described in section 106(a) and 106(c) with respect to a participant may be disclosed only to the extent that information respecting that participant's benefits under title II of the Social Security Act may be disclosed under such Act.

RETENTION OF RECORDS

SEC. 108. Every person subject to a requirement to file any description or report or to certify any information therefor under this title or who would be subject to such a requirement but for an exemption under section 105(a)(1)(A),

(B), or (C) of this title shall maintain records on the matters of which disclosure is required which will provide in sufficient detail the necessary basic information and data from which the documents thus required may be verified, explained, or clarified, and checked for accuracy and completeness, and shall include vouchers, worksheets, receipts, and applicable resolutions, and shall keep such records available for examination for a period of not less than six years after the filing date of the documents based on the information which they contain, or six years after the date on which such documents would have been filed but for an exemption under section 105 (a) (1) (A), (B), or (C).

RELIANCE ON ADMINISTRATIVE INTERPRETATIONS

SEC. 109. In any criminal proceeding under section 503 based on any act or omission in alleged violation of sections 102 through 110 of this Act, no person shall be subject to any liability or punishment for or on account of the failure of such person to (1) comply with sections 102 through 110 of this Act if he pleads and proves that the act or omission complained of was in good faith, in conformity with, and in reliance on any regulation or written ruling of the Secretary, or (2) publish and file any information required by any provision of this part if he pleads and proves that he published and filed such information in good faith, and in conformity with any regulation or written ruling

of the Secretary issued under this part regarding the filing of such reports. Such a defense, if established, shall be a bar to the action or proceeding, notwithstanding that (A) after such act or omission, such interpretation or opinion is modified or rescinded or is determined by judicial authority to be invalid or of no legal effect, or (B) after publishing or filing the description and annual reports, such publication or filing is determined by judicial authority not to be in conformity with the requirements of this part.

BONDING

SEC. 110. (a) Every fiduciary of an employee benefit plan and every person who handles funds or other property of such a plan shall be bonded as provided in this section; except that—

(1) where such plan is one under which the only assets from which benefits are paid are the general assets of a union or of an employer, the administrator, officers, and employees of such plan shall be exempt from the bonding requirements of this section, and

(2) no bond shall be required of a fiduciary (or of any director, officer, or employee of such fiduciary) if such fiduciary—

(A) is a corporation organized and doing business under the laws of the United States or of any State;

(B) is authorized under such laws to exercise trust powers or to conduct an insurance business;

(C) is subject to supervision or examination by Federal or State authority; and

(D) has at all times a combined capital and surplus in excess of such a minimum amount as may be established by regulations issued by the Secretary, which amount shall be at least $500,000.

The amount of such bond shall be fixed at the beginning of each fiscal year of the plan. Such amount shall be not less than 10 per centum of the amount of funds handled, determined as provided in this section; but except that any such bond shall be in at least the amount of $1,000 and no such bond shall be required in an amount in excess of $500,000, except that the Secretary, after due notice and opportunity for hearing to all interested parties, and after consideration of the record, may prescribe an amount in excess of $500,000, which in no event shall exceed 10 per centum of the funds handled. For purposes of fixing the amount of such bond, the amount of funds handled shall be determined by the funds handled by the person, group, or class to be covered by such bond and by their predecessor or predecessors, if any, during the preceding reporting year, or if the plan has no preceding reporting year, the amount of funds to be handled during the

current reporting year by such person, group, or class, estimated as provided in regulations of the Secretary. Such bond shall provide protection to the plan against loss by reason of acts of fraud or dishonesty on the part of such administrator, officer, or employee, directly or through connivance with others. Any bond shall have as surety thereon a corporate surety company which is an acceptable surety on Federal bonds under authority granted by the Secretary of the Treasury pursuant to sections 6 through 13 of title 6, United States Code. Any bond shall be in a form or of a type approved by the Secretary, including individual bonds or schedule or blanket forms of bonds which cover a group or class.

(b) It shall be unlawful for any administrator, officer, or employee to whom subsection (a) applies, to receive, handle, disburse, or otherwise exercise custody or control of any of the funds or other property of any employee benefit plan, without being bonded as required by subsection (a) and it shall be unlawful for any administrator, officer, or employee of such plan, or any other person having authority to direct the performance of such functions, to permit such functions, or any of them, to be performed by any such person, with respect to whom the requirements of subsection (a) have not been met.

(c) It shall be unlawful for any person to procure

any bond required by subsection (a) from any surety or other company or through any agent or broker in whose business operations such plan or any party in interest in such plan has any control or significant financial interest, direct or indirect.

(d) Nothing in any other provision of law shall require any person, required to be bonded as provided in subsection (a) because he handles funds or other property of an employee benefit plan, to be bonded insofar as the handling by such person of the funds or other property of such plan is concerned.

(e) The Secretary shall from time to time issue such regulations as may be necessary to carry out the provisions of this section. When, in the opinion of the Secretary, the administrator of a plan offers adequate evidence of the financial responsibility of the plan, or that other bonding requirements would provide adequate protection of the beneficiaries and participants, he may exempt such plan from the requirements of this section.

FIDUCIARY RESPONSIBILITY

SEC. 111. (a) (1) Every employee benefit plan shall be established pursuant to a written plan, which shall identify and appoint (or provide for the identification and appointment of) an administrator or administrators. The administrator (in the case of a plan with a single administrator) or

the administrators (in the case of a plan with more than one administrator) shall be deemed to have full authority and responsibility for the operation of such employee benefit plan including the authority (i) to establish a funding policy and method consistent with the objectives of the plan, and (ii) to amend such plan (except with respect to contribution rates) where such an amendment is necessary to meet the requirements of this title or where such an amendment is necessary to protect the interests of the participants. Except as provided in section 112 of this title or in paragraph (2) of this subsection, the assets of such a plan shall never inure to the benefit of any employer and shall be held for the exclusive purposes of providing benefits to participants in the plan and their beneficiaries and defraying reasonable expenses of administering the plan. Nothing in this title shall prohibit any person or group of persons from serving as both trustee and administrator for any plan. Notwithstanding any provision of this paragraph, a plan may provide that—

(A) an administrator or trustee may employ any person to provide investment advice with regard to any assets of a plan; and

(B) an administrator, or a trustee at the written direction of the administrator, may appoint an investment manager or managers to manage (including the

power to acquire and dispose of) any assets of a plan. Where an investment manager or managers have been so appointed—

(i) no trustee shall be liable for the acts or omissions to act of such investment manager or managers, or be under an obligation to invest or otherwise manage any asset of the plan which is subject to the management of the investment manager; and

(ii) no administrator shall be liable for the acts or omissions to act of such investment manager or managers if such administrator meets the requirements of subsection (b) (1) of this section in selecting and retaining such investment manager.

Nothing in this subparagraph shall relieve any trustee or administrator of any liability under this section for any act of such trustee or administrator.

(2) A contribution—

(A) which is made by an employer as a mistake of fact, or

(B) which is conditioned upon approval by the Secretary of the Treasury or his delegate of the deduction of the contribution under section 401 of the Internal Revenue Code of 1954, in a case in which the deduction is not approved,

may be returned to the employer within one year after the payment of the contribution.

(b) (1) A fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and—

(A) for the exclusive purpose of:

(i) providing benefits to participants and their beneficiaries; and

(ii) defraying reasonable expenses of administering the plan;

(B) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims;

(C) by diversifying the investments so as to minimize the risk of large losses unless under the circumstances it is prudent not to do so; and

(D) in accordance with the documents and instruments governing the plan insofar as is consistent with this title.

(2) Except as permitted under subsection (a) (2) of this section, a fiduciary with respect to a plan shall not—

(A) deal with the assets of the plan for his own account,

(B) in his individual or any other capacity act in any transaction involving the plan on behalf of a party whose interests are adverse to the interests of the plan or the interests of its participants or beneficiaries,

(C) receive any consideration for his own personal account from any party dealing with such plan in connection with a transaction involving the assets of the plan,

(D) permit the transfer of any property of the plan to or its use by any person known to be a party in interest, except in return for no less than adequate consideration, or

(E) permit the acquisition of any property or services from any person known to be a party in interest, except in exchange for no more than adequate consideration.

(3) In the case of an individual account plan which is a profit-sharing, stock bonus, or thrift and savings plan, the diversification requirement of subparagraph (C) of paragraph (1) of this subsection and the prudence requirement (to the extent that it requires diversification) of subparagraph (B) of paragraph (1) of this subsection is not violated by acquisition or retention of:

(A) Parcels of real property if:

(i) a substantial number of the parcels are dispersed geographically;

(ii) each parcel of real estate and the improvements thereon are suitable (or adaptable without excessive cost) for more than one use;

(iii) even if all of such real property is leased to one lessee (which may be a party in interest); and

(iv) such acquisition and retention otherwise complies with the provisions of this part; or

(B) Securities issued by an employer or a corporation controlling, controlled by, or under common control with the employer.

The preceding sentence shall only apply if such plan explicitly provides for acquisition or retention of such real property or securities, except that it shall apply until the expiration of one year from the effective date of this part to such plans which are in existence on the date of enactment and which acquire or retain such real property or securities without explicit provision in the plan.

(c) Nothing in this section shall be construed to prohibit any fiduciary from—

(1) receiving any benefit to which he may be entitled as a participant or beneficiary in the plan under which the fund was established, so long as the benefit is

computed and paid on a basis which is consistent with the terms of the plan as applied to all other participants and beneficiaries;

(2) receiving any reasonable compensation for services rendered, or for the reimbursement of expenses properly and actually incurred, in the performance of his duties with the fund; except that no person so serving who already receives full-time pay from an employer or an association of employers, whose employees are participants in the plan under which the fund was established, or from an employee organization whose members are participants in such plan shall receive compensation from such fund, except for reimbursement of expenses properly and actually incurred and not otherwise reimbursed; or

(3) serving as a fiduciary in addition to being an officer, employee, agent, or other representative of a party in interest.

(d) Any person who is a fiduciary with respect to a plan who breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries by this title shall be personally liable to make good to such plan any losses to the fund resulting from each breach, and to restore to such plan any profits of such fiduciary which have been made through use of assets of the fund by the fiduciary and shall be subject

to such other equitable or remedial relief as the court may deem appropriate, including removal of such fiduciary. A fiduciary may also be removed for a violation of section 113 of this Act.

(e) All assets of any employee benefit plan (other than any contract for the payment of annuities which is guaranteed by an insurance company and not issued to a trustee of the plan) shall be held in trust by one or more trustees. Such trustee or trustees shall either be named in the trust instrument or appointed by the administrator or administrators and, upon acceptance of their appointment, shall have exclusive authority and discretion to manage, and exclusive control of, the assets of the plan (subject to proper directions of the administrator which are made under the terms of the plan and which are not contrary to this title and except to the extent that authority to manage, acquire, or dispose of assets of the plan is delegated to one or more investment managers). If the assets of a plan are held by two or more trustees—

(1) each shall use reasonable care to prevent a co-trustee from committing a breach, notwithstanding language to the contrary in the trust agreement; and

(2) they shall jointly manage and control the assets of the trust, except that nothing in this paragraph (2) shall preclude any agreement authorized by the trust

instrument allocating specific responsibilities, obligations, or duties among trustees, in which event a trustee to whom certain responsibilities, obligations, or duties have not been allocated shall not be liable by reason of this paragraph (2) either individually or as a trustee for any loss resulting to the fund arising from the acts or omissions to act on the part of another trustee to whom such responsibilities, obligations, or duties have been allocated, unless the trustee to whom the responsibilities, obligations, or duties were not allocated participated knowingly in the activities constituting a breach of the specific responsibilities, obligations, or duties allocated to any other trustee.

(f) No fiduciary shall be liable with respect to a breach of fiduciary duty under this title if such breach was committed before he became a fiduciary or after he ceased to be a fiduciary.

(g) Except as provided in subsections (a) (1) (B) and (e) (2) of this section, any provision in an agreement or instrument which purports to relieve a fiduciary from responsibility or liability for any responsibility, obligation, or duty under this part shall be void as against public policy.

(h) No action may be commenced under subsection (d) of this section with respect to a fiduciary's breach of any

responsibility, duty, or obligation, or with respect to a violation of section 113, after the earlier of—

(1) six years after (A) the date of the last action which constituted a part of the breach or violation, or (B) in the case of an omission, the latest date on which the fiduciary could have cured the breach or violation, or

(2) three years after the earliest date (A) on which the plaintiff had actual knowledge of the breach or violation, or (B) on which a report from which he could reasonably be expected to have obtained knowledge of such breach or violation was filed with the Secretary under this part.

(i) Each pension plan to which this part of this subtitle applies shall provide that benefits provided under the plan may not be assigned or alienated. For purposes of the preceding sentence, there shall not be taken into account any voluntary and revocable assignment of not to exceed 10 percent of any benefit payment, or any irrevocable assignment or alienation of benefits executed before June 1, 1974.

PLAN TERMINATION

SEC. 112. (a) Subject to the authority of the Secretary under section 501 of this Act to prescribe an alternative method for satisfying this section (which method shall take into account the requirements of section 401 (a) (4) of the Internal Revenue Code of 1954) —

(1) upon the complete termination of a pension plan (except to the extent that such plan is an individual account plan), the net assets of the plan shall be distributed as provided in subsection (b) through (h) of this section; and

(2) upon a partial termination of a pension plan (except to the extent that such plan is an individual account plan), a portion of the net assets shall be distributed as provided in subsection (i).

(b) Subject to subsections (c) and (e), the net assets of the plan shall be applied in accordance with the following priorities:

(1) First, to refund to each participant in the plan the amount of contributions (less withdrawals) made by him, less the amount of any benefits received by him under the plan prior to termination,

(2) Second, to pay to each participant (or his beneficiaries) in the plan who (A) has been receiving benefits under the plan or (B) on the date of such termination, has reached the earliest age on which he could, under the terms of the plan, elect to receive retirement benefits (other than on account of disability) under the plan, the present value of his nonforfeitable benefits, reduced (but not below zero) by the amount of contributions distributed under paragraph (1),

(3) Third, to pay to each participant in the plan, other than a participant described in paragraph (2) who had acquired nonforfeitable benefits under the plan prior to termination of the plan, the present value of such nonforfeitable benefits reduced (but not below zero) by the amount of contributions distributed under paragraph (1),

(4) Fourth, to pay to any participant in the plan, to the extent his accrued benefit is not payable under paragraphs (2) and (3), the present value of such benefit reduced (but not below zero) by the amount of contributions distributed under paragraph (1).

(c) (1) If the net assets of a plan are insufficient to meet all the liabilities for the participants described in subsection (b) and the level of benefits under the plan has been increased within the five-year period preceding termination by reason of a plan amendment affecting the benefit schedule, then the net assets shall be distributed as follows (except as otherwise provided in regulations of the Secretary in cases (i) where a change in the benefit schedule during such period resulted in a decrease in benefits for any class of participant, (ii) where the amount of the present value of the benefits of any class of participant cannot be determined under this subsection, or (iii) where the distribution of assets to participants described in subsection (b) (4) of

this section would result in the payment of deferred pension benefits of less than $10 per month to such participants):

(A) After satisfying the first priority class in subsection (b), any remaining assets shall be distributed to the participants from the second through the fourth priority classes using the earliest benefit formula in effect during the past five years (but using vesting and eligibility provisions in effect on date of plan termination).

(B) Any remaining net assets shall be distributed to each participant in the second through the fourth priority classes using the increment (over such earliest benefit formula) of the second earliest benefit formula in effect during the past five years (but using vesting and eligibility provisions in effect on date of plan termination).

(C) Any remaining net assets shall be distributed as above using each successive increment of each successive benefit formula in effect in such period (but using vesting and eligibility provisions in effect on date of plan termination) until all net assets have been distributed.

(2) If after the application of paragraph (1) of this subsection, the aggregate amount of distribution of assets of the plan available for distribution to any class of partic-

ipants specified under subsection (b) does not satisfy the aggregate liabilities to such participants (determined after the application of paragraph (1)), then an amount shall be distributed to each such participant which bears the same ratio to the liability to him under this section (after the application of paragraph (1)) as the aggregate of such aggregate amount of assets bears to the aggregate liability to all participants in such class; except that the plan may provide that the claims of a part of any such class (established on the basis of age or length of service or both) will receive priority over the remainder of such class.

(d) (1) Any assets remaining after the satisfaction of the liabilities described in subsection (b) which are attributable (under regulations of the Secretary) to accumulated investment earnings on employee contributions shall be ratably distributed to the employee contributors according to their rate of contribution.

(2) Any assets remaining after satisfaction of liabilities described in subsection (b) and paragraph (1) of this subsection shall be used to satisfy any such liabilities (other than those described in subsection (b) and paragraph (1)) as the plan may set forth as being payable only if the plan terminates.

(3) Any assets remaining after the satisfaction of all the liabilities described in subsection (b) and paragraphs

(1) and (2) of this subsection may, upon application to the Secretary and after notice, hearing, and a finding that the purposes of this subsection has been complied with, be distributed as provided in the plan. If the plan has no provision for such distribution, such assets shall be distributed pro rata to each person otherwise receiving a distribution under this section.

(e) (1) The aggregate reductions which are made in amounts distributed to a participant under subsections (b) (2), (3), and (4) or under subsection (c) and which are attributable to contributions returned under subsection (b) (1) may not exceed the aggregate contributions returned to such participant under subsection (b) (1).

(2) In the case of a plan to which only participants contribute, subsection (b) shall be applied by reversing the priorities set forth in paragraphs (1) and (2) of such subsection and by deducting amounts received under paragraph (2) from amounts otherwise due under paragraph (1).

(f) For purposes of this section, the term "net assets" means the assets of a plan less (1) reasonable administrative expenses of termination, and (2) assets of the plan which are irrevocably allocated to accounts of individual participants in accordance with a plan provision which has been in effect for at least two years prior to plan termination.

(g) The Secretary shall issue regulations to define acceptable methods for paying to each participant the value of his account, as determined under the priority distribution of assets in this section. Such methods shall provide (to the extent feasible) for the payment of the value of the participant's account as a monthly pension.

(h) Any plan which provides that participants may elect to have retirement benefits paid in the form of one of several types of annuities and which terminates under this section shall permit all participants who have terminated service under the plan to make such an election.

(i) (1) In the event of a complete or partial termination of a plan, the plan shall file a special report on such forms and in such manner as the Secretary may prescribe to carry out the purposes of this section.

(2) (A) A plan shall file a report (as required in paragraph (1)), and the Secretary shall make a determination as to whether or not a partial termination has occurred, if the present value of the accrued benefits (whether forfeitable or nonforfeitable, but excluding the present value of any benefit to the extent that the employee had an immediate right to receive such benefit upon exclusion from coverage) for all employees excluded from coverage (for any reason) in any period of five consecutive plan years equals or exceeds 25 per centum of the present value of

the accrued benefits for all plan participants determined as of the close of any plan year in such five-year period.

(B) In the event the Secretary determines a partial termination has occurred, the net assets shall be distributed to the participants and beneficiaries giving rise to the partial termination in accordance with subsections (b) through (h) of this section as if a complete termination had occurred.

(3) The term "partial plan termination" for purposes of this section shall be defined by the Secretary by regulation. Such regulations shall provide that whether or not a partial termination of a pension plan occurs when a group of participants who have been covered by the plan is subsequently excluded from such coverage either by reason of an amendment to the plan, or because of any event or circumstance substantially beyond their control, shall be determined on the basis of all the facts and circumstances; and whether or not a partial termination occurs when benefits or employer contributions are reduced, or the eligibility or vesting requirements under the plan are made more restrictive shall be determined on the basis of all the facts and circumstances.

PROHIBITION AGAINST CERTAIN PERSONS HOLDING OFFICE

SEC. 113. (a) No person who has been convicted of, or has been imprisoned as a result of his conviction of, rob-

bery, bribery, extortion, embezzlement, fraud, grand larceny, any crime described in section 9(a)(1) of the Investment Company Act of 1940 (15 U.S.C. 80a–9(a)(1)), or a violation of any provision of this title, or a violation of section 302 of the Labor Management Relations Act, 1947 (29 U.S.C. 186), or a violation of chapter 63 of title 18, United States Code, or a violation of section 874, 1027, 1503, 1505, 1506, 1510, 1951, or 1954 of title 18, United States Code, or a violation of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. 401), or conspiracy to commit any such crimes or attempt to commit any such crimes, or a crime in which any of the foregoing crimes is an element, shall serve or be permitted to serve—

(1) as an administrator, officer, trustee, custodian, counsel, agent, or employee of any employee welfare or pension benefit plan, or

(2) as a consultant to any employee welfare or pension benefit plan,

during or for five years after such conviction or after the end of such imprisonment, whichever is the later, unless prior to the end of such five-year period, in the case of a person so convicted or imprisoned, (A) his citizenship rights, having been revoked as a result of such conviction, have been fully restored, or (B) the Board of Parole of the United States Department of Justice determines that

such person's service in any capacity referred to in paragraph (1) or (2) would not be contrary to the purposes of this title. Prior to making any such determination the Board shall hold an administrative hearing and shall give notice of such proceeding by certified mail to the State, county, and Federal prosecuting officials in the jurisdiction or jurisdictions in which such person was convicted. The Board's determination in any such proceeding shall be final. No person shall knowingly permit any other person to serve in any capacity referred to in paragraph (1) or (2) in violation of this subsection. Notwithstanding the preceding provisions of this subsection, no corporation or partnership will be precluded from acting as an administrator, trustee, custodian, counsel, agent, or employee of any employee benefit plan or as a consultant to any employee, welfare, or pension benefit plan without a notice, hearing, and determination by the Secretary that such service would be inconsistent with the intention of this section.

(b) Any person who intentionally violates this section shall be fined not more than $10,000 or imprisoned for not more than one year, or both.

(c) For the purposes of this section:

(1) A person shall be deemed to have been "convicted" and under the disability of "conviction" from the date of the judgment of the trial court or the date of

the final sustaining of such judgment on appeal, whichever is the later event.

(2) The term "consultant" means any person who, for compensation, advises or represents an employee benefit plan or who provides other assistance to such plan, concerning the establishment of operation of such plan.

(3) A period of parole shall not be considered as part of a period of imprisonment.

(d) This section shall not apply to a conviction for a crime committed before the date of enactment of this Act.

ADVISORY COUNCIL

SEC. 114. (a) There is hereby established an Advisory Council on Employee Welfare and Pension Benefit Plans (hereinafter referred to as the "Council") which shall consist of fifteen members to be appointed in the following manner: One from the insurance field, one from the corporate trust field, one qualified public accountant (as defined in section 104 (a) (3) (C) of this Act), one enrolled actuary, three from management, three from labor, one from the investment management field, and one from the multiemployer benefit plan field, all appointed by the Secretary from among persons recommended by organizations in the respective groups; and three representatives of the general public appointed by the Secretary.

(b) It shall be the duty of the Council to advise the Secretary with respect to the carrying out of his functions under this title, and to submit to the Secretary recommendations with respect thereto. The Council shall meet at least twice each year and at such other times as the Secretary requests. At the beginning of each regular session of the Congress, the Secretary shall transmit to the Senate and House of Representatives each recommendation which he has received from the Council during the preceding calendar year and a report covering his activities under this title for the preceding fiscal year, including full information as to the number of plans and their size, the results of any studies he may have made of such plans and this title's operation and such other information and data as he may deem desirable in connection with employee welfare and pension benefit plans.

(c) The Secretary shall furnish to the Council an executive secretary and such secretarial, clerical, and other services as are deemed necessary to the conduct of its business. The Secretary may call upon other agencies of the Government for statistical data, reports, and other information which will assist the Council in the performance of its duties

(d) (1) Members of the Council shall each be entitled to receive the daily equivalent of the annual rate of basic pay in effect for grade GS–18 of the General Schedule for each

day (including traveltime) during which they are engaged in the actual performance of duties vested in the Council.

(2) While away from their homes or regular places of business in the performance of services for the Council, members of the Council shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 (b) of title 5 of the United States Code.

(e) Section 14 (a) of the Federal Advisory Committee Act (relating to termination) shall not apply to the Council.

REPEAL AND EFFECTIVE DATE

SEC. 115. (a) (1) The Welfare and Pension Plans Disclosure Act is repealed; except that such Act shall continue to apply to any conduct which occurred before the effective date of this part.

(2) (A) Section 664 of title 18, United States Code, is amended by striking out "any such plan subject to the provisions of the Welfare and Pension Plans Disclosure Act" and inserting in lieu thereof "any employee benefit plan subject to any provision of title I of the Employee Benefit Security Act of 1974".

(B) (i) Section 1027 of such title 18 is amended by striking out "Welfare and Pension Plans Disclosure Act"

and inserting in lieu thereof "title I of the Employee Benefit Security Act of 1974"; and by striking out "Act" each place it appears and inserting in lieu thereof "title".

(ii) The heading for such section is amended by striking out "Welfare and Pension Plans Disclosure Act" and inserting in lieu thereof "Employee Benefit Security Act of 1974".

(iii) The table of sections of chapter 47 of such title 18 is amended by striking out "Welfare and Pension Plans Disclosure Act" in the item relating to section 1027 and inserting in lieu thereof "Employee Benefit Security Act of 1974."

(C) Section 1954 of such title 18 is amended by striking out "any such plan subject to the provisions of the Welfare and Pension Plans Disclosure Act, as amended" and inserting in lieu thereof "any employee welfare benefit plan or any employee pension benefit plan, respectively, subject to any provision of title I of the Employee Benefit Security Act of 1974"; and by striking out "sections 3(3) and 5(b) (1) and (2) of the Welfare and Pension Plans Disclosure Act, as amended" and inserting in lieu thereof "sections 3(4) and 3(16) of the Employee Benefit Security Act of 1974".

(b) Except as provided in subsection (c), this part (including the amendments and repeal made by subsection (a)) shall take effect six months after the date of enactment of this Act.

(c) The provisions of this title authorizing the Secretary to promulgate regulations shall take effect on the date of enactment of this title.

(d) In order to provide for an orderly disposition of any investments held on the date of enactment of this Act, the retention of which would be prohibited by section 111 (b) (1) (C), and in order to protect the interest of the fund and its participants and beneficiaries, a fiduciary may in his discretion effect the disposition of such investment within three years after the date of enactment of this Act or within such additional time as the Secretary may by rule or regulation allow, and such action shall be deemed to be in compliance with section 111 (b) (1) (C).

PART 2—VESTING

COVERAGE

SEC. 201. (a) Except as provided in subsection (b) this part shall apply to any employee pension benefit plan—

(1) if it is established or maintained by an employer engaged in commerce or in any industry or activity affecting commerce or by such employer together with any employee organization representing

employees engaged in commerce or in any industry or activity affecting commerce; or

(2) if such plan is established or maintained by any employer or by any employer together with any employee organization and if, in the course of its activities, such plan, directly or indirectly, uses any means or instruments of transportation or communication in interstate commerce or the mails.

(b) This part shall not apply to any employee pension benefit plan if—

(1) such plan is a governmental plan (as defined in section 3 (33)):

(2) such plan is a church plan (as defined in section 3 (34)) with respect to which no election has been made under subsection (c);

(3) such plan is established and maintained outside the United States primarily for the benefit of persons who are not citizens of the United States;

(4) such plan is a supplementary plan;

(5) such plan is unfunded and is maintained by an employer primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees; or

(6) such plan is established and maintained by a fraternal society, order, or association described in sec-

tion 501 (c) (8) or (9) of the Internal Revenue Code of 1954.

(c) (1) If the church or convention or association of churches which maintains any church plan makes an election under this subsection (in such form and manner, and with such official, as may be prescribed by regulations), then this part shall apply to such church plan as if this section did not contain an exclusion for church plans.

(2) An election under this subsection with respect to any church plan shall be binding with respect to such plan, and, once made, shall be irrevocable.

ELIGIBILITY REQUIREMENTS

SEC. 202. (a) Except as provided in subsection (b), no pension plan subject to this part shall require as a condition of participation in the plan, that an employee complete a period of service with the employer or employers maintaining the plan extending beyond the later of the following dates:

(1) the date on which the employee attains twenty-five years of age; or

(2) the date on which he completes one year of service.

(b) (1) In the case of any plan which provides that after three years of service each participant has a right to 100 per centum of his accrued benefit under the plan which is

nonforfeitable at the time such benefit accrues, subsection (a) (2) shall be applied by substituting "3 years of service" for "1 year of service".

(2) A defined benefit plan may exclude from participation in the plan any person whose employment commences at an age which is greater than the regular retirement age under the plan reduced by five years.

NONFORFEITABLE BENEFITS

SEC. 203. (a) Every pension plan subject to this part shall provide rights to participants to receive nonforfeitable pension benefits as follows:

(1) A participant's rights in his accrued benefit under the plan derived from his own contributions shall be nonforfeitable.

(2) A participant's rights to accrued benefits derived from employer contributions shall be nonforfeitable in accordance with one of the following alternatives:

(A) A pension plan may provide that the rights of the employees to receive 100 per centum of the accrued benefit derived from employer contributions shall be nonforfeitable after a specified period of service not to exceed ten years.

(B) A pension plan may provide that an employee who has at least five years of service has a nonforfeitable right to a percentage of his accrued benefit derived

from employer contributions. The percentage shall not be less than the percentage determined under the following table:

Years of service:	Nonforfeitable percentage
5	25
6	30
7	35
8	40
9	45
10	50
11	60
12	70
13	80
14	90
15 or more	100

(C) A pension plan satisfies the requirements of this paragraph if, under the plan—

(i) in the case of an active participant, who has at least five years of service, and with respect to whom the sum of his age and years of service equals or exceeds forty-five, the participant has a nonforfeitable right to at least 50 per centum of his accrued benefit derived from employer contributions, and

(ii) for each year of service after such participant first satisfies the requirements of clause (i), the nonforfeitable percentage of his accrued benefit so derived is not less than the percentage determined under the following table:

Additional years of service:	Nonforfeitable percentage
1	60
2	70
3	80
4	90
5	100

(D) In the case of a pension plan in existence on January 1, 1974, for the first five plan years of the plan to which this section applies, in lieu of the nonforfeitable percentages set forth in subparagraph (A), (B), or (C), as the case may be, the nonforfeitable percentage shall be the following percentage of the applicable nonforfeitable percentage determined under such subparagraph:

Plan year to which this section applies:	Percentage of applicable nonforfeitable percentage determined under subparagraph (A), (B), or (C)
1	50
2	60
3	70
4	80
5	90

(3) Notwithstanding the provisions set forth in paragraphs (1) and (2) of this subsection, if the pension plan is a class year plan, then such plan shall provide that the participant shall acquire a nonforfeitable right to 100 per centum of his rights to or derived from the contributions of the employer on his behalf with respect to any plan year, not later than the end of the fifth year following the year for which such contribution was made. For the purposes of this paragraph, the term "class year plan" means a profit-sharing or stock bonus plan which provides for the separate nonforfeitability of employee rights to or derived from the contributions for each plan year.

(b) (1) In computing the period of service under the

plan for purposes of determining the nonforfeitable percentage under subsection (a), a participant's entire service with the employer or employers contributing to or maintaining the plan (or the entire period during which contributions were made by or on behalf of such individual in the case of a plan which employers do not maintain or contribute to) shall be taken into account, except that the following may be disregarded:

(A) service before age 25;

(B) service during a period for which the participant declined to contribute to a plan requiring employee contributions;

(C) service with an employer during any period for which the employer did not maintain the plan;

(D) seasonal service not taken into account under section 206 (a) (3);

(E) service broken by periods of suspension of employment, if the rules governing such breaks in employment are permissible under paragraph (4) of section 206 (a); and

(F) service before January 1, 1969, unless the participant has had at least five years of service after December 31, 1968.

(2) Notwithstanding paragraph (1), for purposes of determining the individual's accrued benefit under the plan,

the plan may disregard service performed by the employee with respect to which he has received—

(A) a distribution of the present value of his entire nonforfeitable benefit if such distribution was less than $1,750, or

(B) a distribution of the present value of his nonforfeitable benefit attributable to such service which he elected to receive.

Subparagraph (A) of the preceding sentence shall apply only if such distribution was made on termination of the employee's participation in the plan. Subparagraph (B) of such sentence shall apply only if such distribution was made on termination of the employee's participation in the plan or under such other circumstances as may be provided under regulations prescribed by the Secretary.

(c) Nothing contained in this part shall be construed to prohibit any plan provision adopted pursuant to regulations of the Secretary of the Treasury or his delegate under section 401(a)(4) of the Internal Revenue Code of 1954 to preclude discrimination.

(d) No pension plan subject to this part to which employees contribute shall provide for forfeiture of a participant's accrued benefit derived from employer contributions (whether or not otherwise nonforfeitable), solely because of

withdrawal by such employee of amounts attributable to his own contributions.

(e) Each plan to which this part applies shall specify which of the schedules described in subparagraph (A), (B), or (C) of subsection (a) (2) shall be the applicable minimum schedule for purposes of such plan. A plan amendment may not change any vesting schedule under the plan if the nonforfeitable percentage of the accrued benefit derived from employer contributions (determined for any year of service) of any employee who is a participant in the plan on the date such amendment is adopted or on the date such amendment becomes effective is less than such nonforfeitable percentage computed under the plan without regard to such amendment.

(f) (1) Except as provided in paragraph (2) or pursuant to section 501, a plan may not be amended in a manner which reduces benefits which accrued before the plan year preceding the plan year in which the amendment is adopted. For the purposes of this subsection, any amendment applying to a plan year which—

(A) is adopted after the close of such plan year but no later than the time prescribed by law (including extensions) for filing the tax returns of the employer sponsoring the plan for the taxable year with which or within which the plan year ends (or in the

case of a multiemployer plan, no later than 2 years after the close of such plan year), and

(B) does not reduce the accrued benefit of any participant determined (without regard to such amendment) as of the beginning of the first plan year to which the amendment applies,

shall, at the election of the plan administrator, be deemed to have been made on the first day of such plan year.

(2) Paragraph (1) shall not prohibit a plan amendment which, not later than one year after the adoption of an earlier amendment, abrogates such earlier amendment.

(g) Notwithstanding any other provision of this part, a pension plan may allow for nonforfeitable benefits after a lesser period and in a greater amount than is required by this section.

DISTRIBUTION OF BENEFITS

SEC. 204. (a) Nonforfeitable benefits accrued by terminated participants may be distributed in the manner set forth in the plan for payment of regular retirement benefits; except that (1) distribution of such benefits shall, at the election of the terminated participant, commence not later than the earlier of the first date that a participant who is not a terminated participant, with the same credited service under the

plan, could have exercised any unrestricted option under the plan to receive regular retirement benefits, or age sixty-five, and (2) the manner of distribution set forth in the plan shall be the same for the benefits payable to both those who were participants within the twelve months immediately prior to making application to receive regular retirement benefits and those who terminated participation prior to the twelve months preceding application to receive regular retirement benefits. For purposes of this section, the term "terminated participant" means a participant for whom service is no longer being credited under the plan.

(b) Nothing in this part shall be construed to prohibit any employee pension plan from providing a reduction to the benefit to be paid any participant on account of such recipient's receipt of benefits under the Social Security Act if—

(1) in the case of a participant who is receiving benefits under such plan on the effective date of this part, such benefit is not decreased by any subsequent increase in benefits received under the Social Security Act; and

(2) in the case of a participant entitled to a nonforfeitable benefit who terminates after the effective date of this part, such benefit is not decreased by any subsequent increases in the benefit levels offered

under the Social Security Act after the date of such termination; and

(3) in the case of a participant other than one described in paragraph (1) above entitled to a nonforfeitable benefit who has terminated prior to the effective date of this part, such benefit is not decreased by any subsequent increases in the benefit levels offered under the Social Security Act following such effective date; and

(4) in the case of a participant other than one described in paragraphs (2) and (3) above entitled to an immediate benefit upon termination, such benefit is not decreased by any subsequent increase in benefit levels offered under the Social Security Act following the date of such termination.

(c) (1) If a pension plan provides for the payment of benefits in the form of an annuity and if—

(A) the participant and his spouse have been married throughout the five-year period ending on the annuity starting date, or

(B) the participant dies after his earliest retirement age and before the annuity starting date, and the participant and his spouse have been married throughout the five-year period ending on the date of his death,

then such plan shall provide for the payment of annuity bene-

fits in a form having the effect of a qualified joint and survivor annuity. A qualified joint and survivor annuity required to be paid under this subsection to a participant or his spouse may be in an annual amount which is reduced from the annual amount of a single life annuity to which such participant would be entitled if he made an election under paragraph (2), but such reductions shall not exceed the estimated additional actuarial costs associated with providing qualified joint and survivor annuities under the plan.

(2) Nothing in this subsection shall prohibit a plan provision which provides that—

(A) each participant has a reasonable period (as prescribed by the Secretary or his delegate by regulations) before the annuity starting date during which he may elect in writing (after having received a written explanation of the terms and conditions of the joint and survivor annuity and the effect of an election under this paragraph) not to take the joint and survivor annuity.

(B) any election under subparagraph (A), and any revocation of any such election, does not become effective (or ceases to be effective) if the participant dies within a period (not in excess of two years) beginning on the date of such election or revocation, as the case may be.

(3) For purposes of this subsection—

(A) the term "annuity starting date" means the first day of the first period for which an amount is received as an annuity (whether by reason of retirement or by reason of disability),

(B) the term "earliest retirement age" means the earliest date on which, under the plan, the participant could elect to receive retirement benefits, and

(C) the term "qualified joint and survivor annuity" means an annuity for the life of the participant with a survivor annuity for the life of his spouse which is not contingent upon survivorship of such spouse beyond the earliest age at which the participant could elect to receive retirement benefits under the plan and which is not less than one-half of the amount of the annuity payable during the joint lives of the participant and his spouse.

(4) This subsection shall apply only if—

(A) the annuity starting date did not occur before the effective date of this part, and

(B) the participant was an active participant in the plan on or after such effective date.

ACCRUED BENEFIT REQUIREMENTS

SEC. 205. (a) Each defined benefit plan to which this

part applies shall provide for a method of accruing benefits which meets the requirements of subsection (b).

(b) (1) A defined benefit plan satisfies the requirements of this subsection if the annual rate at which any participant accrues benefits under the plan for any year of service before the end of $33\frac{1}{3}$ years of service is not less than 3 per centum of the maximum benefit to which such participant would be entitled if he commenced participation at the earliest possible entry age under the plan and served continuously until the earlier of age sixty-five or the normal retirement age specified under the plan. In the case of a plan providing retirement benefits based on compensation during any period, the maximum benefit to which a participant would be entitled shall be determined as if he continued to earn annually the average rate of compensation which he earned during consecutive years of service, not in excess of ten, for which his compensation was the highest. For purposes of this subparagraph, social security benefits and all other relevant factors used to compute benefits shall be treated as remaining constant as of the current year for all years after such current year. If the plan provides that any participant's accrued benefits under the plan will be reduced on account of the participant's social security bene-

fits, the amount of social security benefits used for purposes of computing the reduction of the participant's accrued benefits under this paragraph may not exceed the participant's social security benefits (computed without regard to this sentence) multiplied by his service ratio. For purposes of this paragraph, the term "service ratio" means the participant's years of service under the plan divided by the aggregate years of service he would have if he served until the normal retirement age.

(2) A defined benefit plan satisfies the requirements of this subsection unless under the plan the annual rate at which any participant can accrue the retirement benefits payable at normal retirement age under the plan for any plan year is more than $133\frac{1}{3}$ per centum of the annual rate at which he can accrue benefits for any other plan year; except that an accrual rate for any year before the eleventh year of service which exceeds by more than $133\frac{1}{3}$ per centum of the accrual rate for any year after the tenth year of service may be disregarded. For purposes of this subparagraph—

(A) the accrual rate for any plan year after the participant is eligible to retire with benefits which are not actuarially reduced on account of age or service shall not be taken into account;

(B) any amendment to the plan which is in effect for the current year shall be treated as in effect for all other plan years;

(C) any change in an accrual rate which does not apply to any participant in the current year shall be disregarded;

(D) the fact that benefits under the plan may be payable to certain employees before normal retirement age shall be disregarded; and

(E) social security benefits and all other relevant factors used to compute benefits shall be treated as remaining constant as of the current year for all years after the current year.

(3) Notwithstanding paragraphs (1) and (2), a defined benefit plan satisfies the requirements of this paragraph if such plan—

(A) is funded exclusively by the purchase of individual insurance contracts, and

(B) satisfies the requirements of paragraphs (2) and (3) of section 301(d),

but only if an employee's accrued benefit as of any applicable date is not less than the cash surrender value his insurance contracts would have on such applicable date if the requirements of paragraphs (4), (5), and (6) of section 301(d) were satisfied.

(c) (1) Each defined benefit plan to which this part

applies shall provide for separate accounting for the portion of each employee's accrued benefit derived from any voluntary employee contributions permitted under the plan.

(2) Each individual account plan to which this part applies shall provide for separate accounting for each employee's accrued benefit, and shall require that all contributions, income expenses, and forfeitures be allocated, no less frequently than annually, to the participants' accounts comprising the plan.

(3) For purposes of determining an employee's accrued benefit, the term "year of service" means a period of service (beginning not later than the date on which the employee first becomes a participant in the plan) determined under provisions of the plan which provide for the calculation of such period on a reasonable and consistent basis. The Secretary shall prescribe regulations defining reasonable and consistent basis for purposes of the preceding sentence. In prescribing such regulations, the Secretary shall take into account the rules relating to the measurement of time and to breaks in service contained in the regulations under section 206(b); but plan provisions shall not be deemed to provide for calculation of a period of service on a basis which is not reasonable and consistent merely because they make adjustments in determining year of service (for

purposes of accrual of benefits) in order to reflect less than full-time service by a participant.

(d) (1) For purposes of this part, an employee's accrued benefit derived from employer contributions of any applicable date is the excess of the accrued benefit for such employee as of such applicable date over the accrued benefit derived from contributions made by such employee as of such date.

(2) (A) In the case of a plan other than a defined benefit plan, the accrued benefit derived from contributions made by an employee as of any applicable date is—

(i) except as provided in clause (ii), the balance of the employee's separate account consisting only of his contributions and the income, expenses, gains, and losses attributable thereto, or

(ii) if a separate account is not maintained with respect to an employee's contributions under such a plan, the amount which bears the same ratio to his total accrued benefit as the total amount of the employee's contributions (less withdrawals) bears to the sum of such contributions and the contributions made on his behalf by the employer (less withdrawals).

(B) (i) In the case of a defined benefit plan providing an annual benefit in the form of a single life annuity (with-

out ancillary benefits) commencing at normal retirement age, the accrued benefit derived from contributions made by an employee as of any applicable date is the annual benefit equal to the employee's accumulated contributions multiplied by the appropriate conversion factor.

(ii) For purposes of clause (i) the term "appropriate conversion factor" means the factor necessary to convert an amount equal to the accumulated contributions to a single life annuity (without ancillary benefits) commencing at normal retirement age and shall be 10 percent for a normal retirement age of 65 years. For other normal retirement ages the conversion factor shall be determined in accordance with regulations prescribed by the Secretary.

(C) For purposes of this subsection, the term "accumulated contributions" means the total of—

(i) all mandatory contributions made by the employee,

(ii) interest (if any) under the plan to the end of the last plan year to which this part does not apply (by reason of the applicable effective date), and

(iii) interest on the sum of the amounts determined under clauses (i) and (ii) compounded annually at the rate of 5 percent per annum from the beginning of the first plan year to which this part applies (by reason

of the applicable effective date) to the date upon which the employee would attain normal retirement age.

For purposes of this subparagraph, the term "mandatory contributions" means amounts contributed to the plan by the employee which are required as a condition of employment, as a condition of participation in such plan, or as a condition of obtaining benefits under the plan attributable to employer contributions.

(D) The Secretary is authorized to adjust by regulation the conversion factor described in subparagraph (B), the rate of interest described in clause (iii) of subparagraph (C), or both, from time to time as he may deem necessary. The rate of interest shall bear the relationship to 5 percent which the Secretary determines to be comparable to the relationship which the long-term money rates and investment yields for the last period of 10 calendar years ending at least 12 months before the beginning of the plan year bear to the long-term money rates and investment yields for the 10-calendar-year period 1964 through 1973. No such adjustment shall be effective for a plan year beginning before the expiration of 1 year after such adjustment is determined and published.

(E) The accrued benefit derived from employee con-

tributions shall not exceed the employee's accrued benefit under the plan.

(3) For purposes of this part, in the case of any defined benefit plan, if an employee's accrued benefit is to be determined as an amount other than an annual benefit commencing at normal retirement age, or if the accrued benefit derived from contributions made by an employee is to be determined with respect to a benefit other than an annual benefit in the form of a single life annuity (without ancillary benefits) commencing at normal retirement age, the employee's accrued benefit, or the accrued benefits derived from contributions made by an employee, as the case may be, shall be the actuarial equivalent of such benefit or amount determined under paragraph (1) or (2) of this subsection.

(e) In the case of a defined benefit plan which permits voluntary employee contributions, the portion of an employee's accrued benefit derived from such contributions shall be treated as an accrued benefit derived from employee contributions under a plan other than a defined benefit plan.

DEFINITION OF YEAR OF SERVICE

SEC. 206. (a) (1) For purposes of section 202, the term "year of service" means a period of service determined under regulations prescribed by the Secretary which provide for the calculation of such period on any reasonable and consistent basis.

(2) For purposes of this section, the calculation of any period of service shall not be treated as made on a reasonable basis—

(A) if the average period of service required for participation in the plan (determined as if one employee commenced his service on each day) is more than 12 months, or

(B) if any employee who has completed more than 17 months of continuous service is excluded from participation in the plan by such calculation.

(3) For purposes of this section, the calculation of any period of service shall not be treated as made on a reasonable basis in the case of a seasonal employee whose customary employment is for at least 5 months in a 12-month period, if his period of service is treated as less than the period of service he would have had if his customary employment had been nonseasonal.

(4) (A) For purposes of this section, in the case of any employee who has a break in his service with the employer for a continuous period of not less than 1 year, the calculation of his period of service shall not be treated as not made on a reasonable basis merely because, under the plan, service performed by such employee is not taken into account until he has completed a continuous period of service (not in excess of 1 year) after his return.

(B) For purposes of this section, in the case of any employee who has a break in his service with the employer and, who before such break, had a nonforfeitable right to 50 percent or more of his accrued benefit derived from employer contributions, the calculation of his period of service shall not be treated as made on a reasonable basis if service performed by such employee before the end of such break in service is not taken into account in calculating his period of service.

(C) For purposes of this section, except as otherwise provided in subparagraphs (A) and (D), in the case of any employee who has a break in his service with the employer for a continuous period of not less than 12 months, the calculation of his period of service shall not be treated as made on a reasonable basis if such employee completed four consecutive years of service prior to such break and all service prior to such break is not taken into account.

(D) Except as provided in subparagraph (B), for purposes of this section, in the case of any employee who has a break in his service with the employer for a continuous period of not less than 6 years, the calculation of his period of service shall not be treated as not made on a reasonable basis merely because under the plan, service performed by such employee before the end of such break in service is not taken into account.

(5) The regulations prescribed under this subsection

and subsection (b) shall take into account the customary working period (as expressed in hours, days, weeks, months, or years) in any industry where, by the nature of the employment, such period differs substantially from the comparable work period in industry generally.

(b) For purposes of section 203, the term "year of service" means a period of service determined under regulations prescribed by the Secretary which provide for the calculation of such period on any reasonable and consistent basis. The regulations prescribed under this subsection shall be consistent with the regulations prescribed under subsection (a) for purposes of section 202.

EFFECTIVE DATE

SEC. 207. (a) Except as otherwise provided in this section, this part shall apply in the case of plan years beginning after the date of the enactment of this Act.

(b) (1) In the case of a plan in existence on January 1, 1974, this part shall apply in the case of plan years beginning after December 31, 1975. In any case described in paragraph (2) of this subsection, such paragraphs shall apply if (and only if) their application results in a later effective date of this part.

(2) In the case of a plan maintained pursuant to one or more agreements which the Secretary finds to be collec-

tive-bargaining agreements between employee representatives and one or more employers, and which he finds (in the aggregate) cover more than 25 percent of the participants in such plan, paragraph (1) shall be applied by substituting for December 31, 1975, the earlier of—

(A) the date on which the last of such agreements relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of the enactment of this Act), or

(B) December 31, 1980,

but in no event shall a date earlier than December 31, 1976, be substituted.

Part 3—Funding

COVERAGE

Sec. 301. (a) Except as provided in subsections (b), (c), and (d), this part shall apply to any employee benefit pension plan—

(1) if it is established or maintained by any employer engaged in commerce or in any industry or activity affecting commerce or by such employer together with any employee organization representing employees engaged in commerce or in any industry or activity affecting commerce; or

(2) if such plan is established or maintained by any employer or by any employer together with any em-

ployee organization and if, in the course of its activities, such plan, directly or indirectly, uses any means or instruments of transportation or communication in interstate commerce or the mails.

(b) This part shall not apply to any employee pension benefit plan if—

(1) such plan is a governmental plan (as defined in section 3(33));

(2) such plan is a church plan (as defined in section 3(34)) with respect to which no election has been made under section 201(c);

(3) such plan is established and maintained outside the United States primarily for the benefit of persons who are not citizens of the United States; or

(4) such plan is a supplementary plan;

(5) such plan is unfunded and is maintained by an employer primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees;

(6) such plan provides contributions or benefits exclusively for a sole proprietor; or, in the case of a partnership, exclusively for one or more partners each of whom owns more than 10 per centum of either the capital interest or the profits interest in such partnership;

(7) such plan has not, at any time after the date

of the enactment of this Act, provided for employer contributions; or

(8) such plan is established and maintained by a fraternal society, order, or association described in section 501 (c) (8) or (9) of the Internal Revenue Code of 1954.

(c) This part shall not apply to any employee pension benefit plan if the plan is a profit-sharing, savings, or other plan which is an individual account plan.

(d) This part shall not apply to a plan if—

(1) the plan is funded exclusively by the purchase of individual insurance contracts,

(2) such contracts provide for level annual premium payments to be paid extending not later than the retirement age for each individual participating in the plan, and commencing with the date the individual became a participant in the plan (or, in the case of an increase in benefits, commencing at the time such increase becomes effective),

(3) benefits provided by the plan are equal to the benefits provided under each contract at normal retirement age under the plan and are guaranteed by an insurance carrier (licensed under the laws of a State to do business with the plan) to the extent premiums have been paid,

(4) premiums payable for the plan year, and all prior plan years under such contracts have been paid before lapse or there is reinstatement of the policy,

(5) no rights under such contracts have been subject to a security interest at any time during the plan year, and

(6) no policy loans are outstanding at any time during the plan year.

FUNDING ACCOUNT

SEC. 302. (a) Every employee pension benefit plan subject to this part shall provide for a minimum annual level of contributions which meets the minimum funding standard for any plan year to which this part applies. A plan to which this section applies meets the minimum funding standard for such plan for a plan year if at the end of which the plan does not have an accumulated funding deficiency. For purposes of this part, the term "accumulated funding deficiency" means for any plan the excess of the total charges to the funding standard account for all plan years (beginning with the first plan year to which this part applies) over the total credits to such account for such years.

(b) (1) Each plan to which this part applies shall establish and maintain a funding standard account. Such account shall be credited and charged solely as provided in this section.

(2) For a plan year, the funding standard account shall be charged with the sum of—

(A) the normal cost of the plan for the plan year,

(B) the amounts necessary to amortize in equal annual installments (until fully amortized)—

(i) in the case of a plan in existence on January 1, 1974, the unfunded past service liability under the plan on the first day of the first plan year to which this section applies, over a period of forty plan years,

(ii) in the case of a plan which comes into existence after January 1, 1974, the unfunded past service liability under the plan on the first day of the first plan year to which this section applies, over a period of thirty plan years (forty plan years in the case of a multiemployer plan),

(iii) separately, with respect to each plan year, the net increase (if any) in unfunded past service liability under the plan arising from plan amendments adopted in such year, over a period of thirty plan years (forty plan years in the case of a multiemployer plan), and

(iv) separately, with respect to each plan year, the net experience loss (if any) under the plan, over a period of fifteen plan years (twenty

plan years in the case of a multiemployer plan), and

(C) the excess, if any, for such plan year of

(i) the annual amount which would be necessary to amortize in equal annual installments from such year over a period of twenty years the excess, if any, of the present value of all nonforfeitable benefits (computed using appropriate mortality and interest assumptions) over the value of the plan's assets, over

(ii) the excess, if any, of the sum of the amounts computed under subparagraphs (A) and (B) of paragraph (2) over the amount computed under paragraph (3) (B).

(3) For a plan year, the funding standard account shall be credited with the sum of—

(A) the amount considered contributed to the plan for the plan year, and

(B) the amount necessary to amortize in equal annual installments (until fully amortized)—

(i) separately, with respect to each plan year, the net decrease (if any) in unfunded past service liability under the plan arising from plan amendments adopted in such year, over a period of thirty

plan years (forty plan years in the case of a multiemployer plan), and

(ii) separately, with respect to each plan year, the net experience gain (if any) under the plan, over a period of fifteen plan years (twenty plan years in the case of a multiemployer plan).

(4) Under regulations prescribed by the Secretary, amounts required to be amortized under paragraph (2) or paragraph (3), as the case may be—

(A) may be combined into one amount under such paragraph to be amortized over a period determined on the basis of the remaining amortization period for all items entering into such combined amount, and

(B) may be offset against amounts required to be amortized under the other such paragraph, with the resulting amount to be amortized over a period determined on the basis of the remaining amortization periods for all items entering into whichever of the two amounts being offset is the greater.

(5) The funding standard account (and items therein) shall be charged or credited with interest at the appropriate rate consistent with the rate or rates of interest used under the plan to determine costs. The Secretary shall prescribe regulations to carry out this paragraph.

(c) (1) For purposes of this section, normal costs,

accrued liability, past service liabilities, and experience gains and losses shall be determined under the funding method used to determine costs under the plan.

(2) (A) For purposes of this section, the value of the plan's assets shall be determined on the basis of any reasonable actuarial method of valuation which takes into account fair market value and which is permitted under regulations prescribed by the Secretary.

(B) The value of a bond or other evidence of indebtedness which is not in default as to principal or interest may, at the election of the plan administrator, be determined on an amortized basis running from initial cost at purchase to par value at maturity or earliest call date. Any election under this subparagraph shall be made at such time and in such manner as the Secretary shall by regulations provide, shall apply to all such evidences of indebtedness, and may be revoked only with the consent of the Secretary.

(3) For purposes of this section, all costs, liabilities, rates of interest, and other factors under the plan shall be determined on the basis of actuarial assumptions which meet the requirements of section 104 (a) (4) (B) (i) and (ii).

(d) If the funding method for a plan is changed, the new funding method shall become the funding method used to determine costs and liabilities under the plan only if the change is approved by the Secretary. If the plan year for

a plan is changed, the new plan year shall become the plan year for the plan only if the change is approved by the Secretary.

(e) (1) (A) For the purpose of this section, an experience gain or loss occurs wherever the experience of the plan deviates from the projected assumptions sufficiently to require a change in such assumptions. The amount of such gain or loss shall be calculated as the increase (in the case of an experience loss) or the decrease (in the case of an experience gain) in the accrued portion of the unfunded liabilities of the plan attributable to such change in the assumptions. The Secretary shall promulgate regulations to carry out this subsection.

(B) For purposes of this subparagraph (A), if—

(i) a change in benefits under the Social Security Act or in other retirement benefits created under Federal or State law, or

(ii) a change in the definition of the term "wages" under section 3121 of the Internal Revenue Code of 1954, or a change in the amount of such wages taken into account under regulations prescribed for purposes of section 401 (a) (5) of such Code,

results in an increase or decrease in accrued liability under a plan, such increase or decrease shall be treated as an experience loss or gain.

(2) For purposes of this section, a determination of experience gains and losses and a valuation of the plan's liability shall be made not less frequently than once every three years, except that such determination shall be made more frequently to the extent required in particular cases under regulations prescribed by the Secretary.

(f) (1) If, as of the close of a plan year, a plan would (but for the application of this paragraph) have an accumulated funding deficiency in excess of the full funding limitation—

(A) the funding standard account shall be credited with the amount of such excess, and

(B) all amounts described in paragraphs (2) (B) and (3) (B) of subsection (b) which are required to be amortized shall be considered fully amortized for purposes of such paragraphs.

(2) For purposes of paragraph (1), the term "full funding limitation" means the excess (if any) of—

(A) the accrued liability (including normal cost) under the plan (determined under the entry age normal funding method if such accrued liability cannot be directly calculated under the funding method used for the plan), over

(B) the lesser of the fair market value of the

plan's assets or the value of such assets determined under subsection (c) (2).

ENFORCEMENT OF FUNDING STANDARDS

SEC. 303. (a) When the pension plan's level of funding fails to meet the requirements of section 302, the administrator shall take such steps as are necessary to bring the level of funding into conformity with the benefits offered by the plan and are consistent with this title. He shall take whatever actions are necessary to protect the benefit rights of all plan participants but shall first make secure the interests of those participants whose benefit rights have become nonforfeitable. The administrator shall require payment of any contribution required under the plan; and in addition he is specifically authorized, where necessary (1) to undertake to secure additional levels of funding from the sponsoring employer or employers to the full extent possible, and (2) where he cannot secure adequate additional levels of funding (A) subject to section 203 (f), to amend the plan's benefit schedule so as to reduce the value of the accrued regular retirement benefits (whether or not forfeitable), (B) to suspend the further accumulation of regular retirement benefits under the plan, (C) to suspend or terminate the operation of the plan, and (D) to take any other action in conformity with this title which is necessary to secure the rights of the participants to regular retirement benefits.

(b) When a plan fails to meet the funding requirements of section 302 for five consecutive plan years, the administrator shall (subject to section 203 (f)) amend the benefit schedule for such plan to reduce the value of the accrued liabilities to such an extent as is necessary to bring the plan's funding schedule into conformity with the requirements of section 302 (a).

(c) Whenever the administrator determines that the funding requirements under section 302 (a) have not been met, he shall so notify the Secretary and each participant within sixty days, and not earlier than sixty days or later than ninety days after such notification he shall take action pursuant to subsection (a) or (b) of this section (unless the Secretary stays his proposed action under subsection (d) (2)). He shall inform the Secretary and each participant of whatever action he proposes to take under subsection (a) or (b), and the reason for such action within sixty days after the notice under the preceding sentence.

(d) If the Secretary receives a notification required under subsection (c) of this section, he may—

(1) require the administrator to make such additional reports as he determines are necessary to fully disclose the extent of the level of funding of the plan, the adequacy of protection afforded the participants,

and the adequacy of the remedy proposed by the administrator; and

(2) stay the action proposed by the administrator, if the Secretary has reason to believe the administrator's action is not fair and equitable to participants and beneficiaries, or (after notice and opportunity to present views) order the administrator to take any action described in subsection (a), (b), or (c) of this section, or both.

(e) The provisions of part 2 of this subtitle (other than section 203 (f)) shall not be construed as prohibiting any action authorized or required by this section.

SPECIAL DISTRIBUTION AND MERGER REQUIREMENTS

SEC. 304. (a) No pension plan to which this part applies may merge or consolidate with, or transfer its assets or liabilities to, any other pension plan unless each participant in each plan would receive a termination benefit immediately after the merger, consolidation, or transfer which is equal to or greater than the termination benefit he would receive immediately before the merger, consolidation, or transfer.

(b) No pension plan to which this part applies may make a lump-sum distribution of the present value of nonforfeitable pension benefits to a participant or beneficiary if such distribution exceeds the termination benefit he would receive if the plan terminated on the date of such distribution.

(c) No merger, consolidation, or transfer of assets or liabilities, or distributions of assets to any participant in any plan year in excess of $25,000, may be made by any pension plan subject to this part, unless the administrator has filed an actuarial statement of valuation evidencing compliance with the requirements of this section with the Secretary no less than thirty days prior to such merger, consolidation, transfer, or lump-sum distribution.

(d) For the purposes of this section, a participant's termination benefit as of a particular time is the amount a participant would receive under section 112 of this Act if the plan were terminated on such date.

EFFECTIVE DATE

SEC. 305. (a) Except as otherwise provided in this section, this part shall apply in the case of plan years beginning after the date of the enactment of this Act.

(b) (1) Except as otherwise provided in subsection (c), in the case of a plan in existence on January 1, 1974, this part shall apply in the case of plan years beginning after December 31, 1975. In any case described in paragraph (2) of this subsection, such paragraph shall apply if (and only if) its application results in a later effective date for this part.

(2) In the case of a plan maintained pursuant to one or more agreements which the Secretary finds to be collective-bargaining agreements between employee representatives

and one or more employers, and which he finds (in the aggregate) cover more than 25 per centum of the participants in the plan, paragraph (1) shall be applied by substituting for December 31, 1975, the earlier of—

(A) the date on which the last of such agreements relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of the enactment of this Act), or

(B) December 31, 1980,

but in no event shall a date earlier than December 31, 1976, be substituted.

(c) (1) Notwithstanding subsection (b) of this subsection, with respect to plan years beginning after the date of enactment of this Act and ending before the first plan year to which (but for this paragraph) part would apply to such plan, any plan in effect on January 1, 1974, shall provide for a minimum level of contributions equal to or greater than the sum of—

(A) the normal service costs for such year;

(B) the unfunded portion of the accrued liability (if any) times the interest rate used in computing such liability under the actuarial cost method used to determine such liability.

(2) In the case of a plan in effect on January 1, 1974, established by an employee organization and financed en-

tirely by an allocation of dues, this title shall apply to plan years beginning more than seven years after the date of enactment of this Act.

PART 4—PLAN TERMINATION INSURANCE

ESTABLISHMENT OF PENSION INSURANCE CORPORATION

SEC. 401. (a) ESTABLISHMENT.—There is established with the Department of Labor a body corporate to be known as the Pension Benefit Guaranty Corporation (hereinafter referred to as the "Corporation"). In carrying out its functions under this part the Corporation shall be administered by a Board of Directors (as provided in subsection (c)), under the general supervision and direction of the Secretary of Labor.

(b) BOARD OF DIRECTORS.—The Board of Directors of the Corporation shall be composed of the Secretary of Labor and two officers or employees of the Department of Labor, who shall serve as directors at the pleasure of the Secretary. Members of the Board shall serve without compensation, but shall be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of their duties of members of the Board. The Secretary of Labor shall be the Chairman of the Board of Directors.

(c) MEETINGS OF BOARD.—The Board of Directors shall meet at the call of its Chairman, or as otherwise provided by the bylaws of the Corporation.

PURPOSES AND POWERS OF THE CORPORATION

SEC. 402. (a) IN GENERAL.—The purpose of the Corporation is—

(1) encourage the continuation and maintenance of voluntary private pension plans to the benefit of their participants,

(2) provide for the timely and uninterrupted payment of pension benefits to the participants and beneficiaries under all insured plans, and

(3) minimize over the long run the premiums charged by the Corporation under section 405.

In order to carry out these purposes, the Corporation is authorized to provide plan termination insurance as provided in this part.

(b) POWERS.—To carry out the foregoing purposes, the Corporation shall have the usual powers conferred on a nonprofit corporation by the District of Columbia Nonprofit Corporation Act. In addition to any specific power granted to the Corporation elsewhere in this part, the Corporation shall have the power—

(1) to sue and be sued, in its corporate name and through its own counsel, in any court, State or Federal;

(2) to adopt, amend, and repeal, by its Board of Directors, bylaws and rules relating to the conduct of its

business and the exercise of all other rights and powers granted to it by this part;

(3) to conduct its business (including the carrying on of operations and the maintenance of offices) and to exercise all other rights and powers granted to it by this part in any State without regard to qualification, licensing, or other statute in such State or political subdivision thereof;

(4) to lease, purchase, accept gifts or donations of, or otherwise to acquire, to own, hold, improve, use, or otherwise deal in or with, and to sell, convey, mortgage, pledge, lease, exchange, or otherwise dispose of, any property, real, personal, or mixed, or any interest therein, wherever situated;

(5) subject to the provisions of section 401 (e), to elect or appoint such officers, attorneys, employees, and agents as may be required, to determine their qualifications, to define their duties, to fix their salaries, and, to the extent desired, require bonds for them and fix the penalty thereof; and

(6) to enter into contracts, to execute instruments, to incur liabilities, and to do any and all other acts and things as may be necessary or incidental to the conduct

of its business and the exercise of all other rights and powers granted to the Corporation by this part.

(e) BYLAWS.—As soon as practicable but not later than 180 days after the date of enactment of this Act, the board of directors shall adopt initial bylaws and rules relating to the conduct of the business of the Corporation. Thereafter, the board of directors may alter, supplement, or repeal any existing bylaw or rule, and may adopt additional bylaws and rules, from time to time as may be necessary. The Secretary of Labor shall cause a copy of the bylaws of the Corporation to be published in the Federal Register not less than annually.

CONDITIONS OF INSURANCE

SEC. 403. The Corporation shall insure participants and beneficiaries of plans covered under this part against the loss of benefits (as defined in section 409) which arise from the complete or partial termination of such plans, as determined by the Secretary of Labor in accordance with sections 112, 411, and 501 of this Act. For purposes of this part, a partial termination shall not be deemed to have occurred if, as a result of actions taken by the Secretary pursuant to sections 112, 411, and 501 of this Act, all nonforfeitable benefits of participants and beneficiaries to which the partial termination applies continue as obligations of the plan or are otherwise satisfied.

PLAN TERMINATION INSURANCE FUNDS

SEC. 404. (a) FUNDS ESTABLISHED.—The Corporation shall establish two Plan Termination Insurance Funds. The Single Employer Primary Trust Fund shall relate to single employer plans. The Multiemployer Trust Fund shall relate to multiemployer plans. The Corporation may establish a Single Employer Optional Trust Fund if it finds that such a fund is feasible, and may establish one or more additional trust funds as provided for in section 409. No trust fund, established by or under this subsection, or benefits insured thereunder, may at any time be merged with any other trust fund so established nor may the assets of any trust fund so established be used to satisfy liabilities with respect to any other trust fund so established. All amounts received directly or indirectly as premiums, assessments, or fees, and any other money, property, or assets derived from the operation of the Corporation, shall be deposited in the appropriate fund as determined by the board of directors. All claims, expenses, and payments pursuant to the operation of the Corporation shall be paid only from the appropriate fund as determined by the board of directors, subject to the provisions of sections 404 and 405.

(b) INVESTMENT OF AMOUNTS IN FUNDS.—Amounts in the funds may be invested in—

(1) obligations of the United States,

(2) obligations guaranteed as to principal and interest by the United States, and

(3) other assets which the board of directors of the Corporation determines by rule or by law to be permissible investments and which are not inconsistent with the other provisions of this part.

(c) BORROWING AUTHORITY.—The Corporation may issue to the Secretary of the Treasury notes or other obligations in an aggregate amount of not to exceed $100,000,000, in such forms and denominations, bearing such maturities, and subject to such terms and conditions as may be prescribed by the Secretary of the Treasury. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of such notes or other obligations of the Corporation. The Secretary of the Treasury shall purchase any notes or other issued by the Corporation under the preceding sentence, and for that purpose he is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, as amended, and the purposes for which securities may be issued under that Act, as amended, are extended to include any purchase of such notes and obliga-

tions. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this subsection. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States.

PREMIUM SCHEDULES

SEC. 405. (a) IN GENERAL.—The Corporation shall prescribe such separate schedules for the premiums to be paid by single employer and multiemployer pension plans as may be necessary to carry out its functions under this part, taking into account the insurance coverage to be provided and the administrative and operational costs of the Corporation.

(b) PREMIUMS TO BE UNIFORM.—The premium rates charged by the Corporation for any period shall be uniform for all single employer plans insured by the Corporation and shall be uniform for all multiemployer plans insured by the Corporation, except as provided in subsection (c) of this section.

(c) BASIS FOR SETTING PREMIUMS.—

(1) INITIAL PREMIUMS.—Unless a revised premium schedule takes effect under section 406, the premium charged any plan insured by the Corporation for any period shall be made up of two parts—

(A) a rate applicable to the excess, if any, of the present value of the benefits of a plan which are insured (as defined in section 409 (b)) over the value of the assets of a plan, which rate shall not exceed 0.1 per centum for single employer plans and shall not exceed 0.025 per centum for multiemployer plans, and

(B) an additional charge based on a rate applicable to the present value of the benefits of a plan which are insured (as defined in section 409 (b)), which rate shall be determined separately for single employer and multiemployer plans.

The rate for the additional charge referred to in subparagraph (B) shall be set by the Corporation for every year at a level (separately for single employer and multiemployer plans) which the Corporation estimates will yield total revenue approximately equal to the total revenue to be derived by the Corporation from the premiums referred to in subparagraph (A).

(2) SUPPLEMENTAL PREMIUMS.—The premium charged any plan for insurance of benefits or against loss as provided in section 409 (c) shall be based on the risk insured and shall reflect the actual and projected experience losses incurred by the Corporation in regard to such risks as determined by the Corporation.

(3) GRADED PREMIUM SCHEDULE.—The premium rates applicable to benefits insured under section 409 (b) shall take effect in accordance with the following table for any plan which is not a successor plan covering some or all of the same participants:

Number of years plan in effect:	The applicable premium rate or rates shall be multiplied by the following percentage:
1	50
2	60
3	70
4	80
5	90
6 or more	100.

(4) VALUE OF ASSETS.—The Corporation shall adopt rules relating to the valuation of a plan's assets for premium purposes and shall file a copy of such rules with the Secretary. To the extent deemed feasible by the Corporation, such rules shall—

(A) require securities for which an available market exists to be valued at fair market value or the average of fair market value over the eighteen-month period ending with the month of valuation,

(B) permit the value of a bond or other evidence of indebtedness which is not in default as to principal or interest, to be determined on an amortized basis running from initial cost at purchase to par value at maturity or earliest call date or on the basis of the commuted value of the future

income it will produce discounted at the rate of interest assumed in the calculation of plan liabilities,

(C) require other assets to be valued on a reasonable and consistent basis (which takes into account fair market value where applicable).

(5) PRESENT VALUE OF INSURED BENEFIT.—The Corporation shall adopt rules relating to the valuation of a plan's insured benefits for premium purposes and shall file a copy of such rules with the Secretary. To the extent deemed feasible by the Corporation such rules shall—

(A) recognize that under this title a complete actuarial valuation of a plan's liabilities is required at least every three years, and should set standards for acceptable approximation methods to be used for interim years, and

(B) require that the present value of insured benefits be calculated using appropriate rates of mortality and interest which will result in equitable treatment as between plans in similar circumstances.

(6) STATEMENT OF COMPLIANCE.—The Corporation shall require a report to be submitted which contains a statement by an enrolled actuary, as defined in section 104 (a) (4) (C) of this Act, that the rules of

the Corporation have been complied with regarding the calculation of any premiums under this section.

(7) INTEREST.—The Corporation may require that interest at appropriate rate or rates be charged on unpaid, past due, premiums in addition to premiums otherwise calculated under this section.

(8) OPTIONAL TRUST FUND PREMIUMS.—The Corporation shall establish rules which shall apply to the premium to be charged for plans to which the Single Employer Optional Trust Fund applies. Such rules shall include the following:

(A) The Corporation shall require each plan to make an election whether to continue to be treated as a Primary Trust Fund plan or as an Optional Trust Fund plan, for premium purposes under this section and for purposes of the employer liability provisions under section 412, at the later of—

(i) three years after the effective date of this part, or

(ii) the date the plan is first covered under this title. (For purposes of this paragraph the plan and any successor plan covering some or all of the same participants shall be deemed to be the same plan.)

Such election by a plan shall be irrevocable except with the concurrence of the Corporation in accordance with rules adopted by the Corporation which shall be consistently and uniformly applied to all plans making such election.

(B) The premiums charged plans electing Optional Trust Fund treatment shall be based upon—

(i) the present value of the benefits of a plan which are insured under this part, and

(ii) the excess, if any, of the amount determined under clause (i) over the value of the assets of a plan,

and shall be based on the actual and projected experience of all such plans.

(C) The Optional Trust Fund, at the time plans are first permitted to elect such option, shall be credited with that portion of the premiums and income, as determined by the Corporation, which up to that time were allocated to the Single Employer Optional Trust Fund.

REVISED PREMIUM SCHEDULE PROCEDURE

SEC. 406. The Corporation may revise any premium schedule in order to charge premiums to plans insured under the Single Employer or Multiemployer Trust Funds in a manner other than that provided in section 405(c)(1),

whenever it determines that revised rates are necessary, but a revised schedule shall apply only to plan years beginning more than thirty days after the date on which the Congress approves such revised schedule by a concurrent resolution originating in the House of Representatives. In order to place a revised premium schedule in effect, the Corporation shall transmit the proposed schedule, its proposed effective date, and the reasons for its proposal to the Committee on Education and Labor of the House of Representatives.

COOPERATION AND ASSISTANCE OF GOVERNMENT AGENCIES

SEC. 407. Section 506(a) of this Act shall apply in carrying out functions of the Corporation in the same manner as it applies in carrying out functions of the Secretary.

REPORTS

SEC. 408. The Secretary may by regulation require that reports which are filed under sections 104 and 105 of this Act by plans to which this part applies include such additional information as he deems necessary to carry out this part.

COVERAGE

SEC. 409. (a) PLANS COVERED.—

(1) MANDATORY COVERAGE.—Subject to section 416, this title shall apply to a plan which—

(A) is a plan covered under part 3 of this subtitle (including plans covered by reason of section 305 (c) (1)), and

(B) which covers more than twenty-five participants (where at least ten have obtained nonforfeitable benefits) at all times during any period of five consecutive plan years, and

(C) which has a vested benefit ratio of 10 per centum or greater when the conditions under (A) and (B) are met. For purposes of this subparagraph vested benefit ratio means the value of assets (as determined under section 405 (c) (5)) over the present value of insured benefits (as determined under section 405 (c) (6)).

A plan once covered under this paragraph shall continue to be covered except as provided under rules set by the corporation.

(2) VOLUNTARY COVERAGE.—Subject to section 416, the Corporation may insure plans to which part 3 applies (including plans covered by reason of section 305 (c) (1)) and which are registered under section 512 of this Act and qualified under section 401 (a) of the Internal Revenue Code of 1954, but which are not otherwise covered under this part to the extent that such plans meet underwriting standards (which shall provide

that such plans in the aggregate shall not unreasonably increase the losses incurred by the Corporation so as to require unreasonable increases in the premium rates charged plans covered under paragraph (1)) as set forth in rules established by the Corporation.

(3) TRUST FUND STATUS.—The Corporation shall insure covered benefits, as determined in this section, for participants and beneficiaries of single employer plans and shall pay such benefits from the Single Employer Trust Fund, except as provided in subsection (c) of this section. The Corporation shall insure covered benefits, as determined in this section, for participants and beneficiaries of multiemployer plans and shall pay such benefits from the Multiemployer Trust Fund, except as provided in subsection (c) of this section.

(b) BENEFITS COVERED.—Subject to the limitations in subsection (d) of this section, the Corporation shall guarantee the payment of—

(1) any rights under the plan in a regular retirement benefit, or in an equivalent benefit, which are nonforfeitable (other than by reason of such termination) according to the schedule in section 203 in effect for such plan on such termination date (or, if earlier, the disqualification date within the meaning of subsection (h) of this section), and

(2) any contingent rights under the plan to benefits which are ancillary to the retirement benefits if, on such termination date (or, if earlier, such disqualification date), all contingencies (other than the passage of time) on which the payment of such ancillary benefits depends have been satisfied.

(c) SUPPLEMENTAL INSURED BENEFITS.—The Corporation shall undertake a study to determine under what conditions losses of the plan or benefits other than those described in section (b) can be insured. To the extent that the Corporation determines that losses of the plan, or additional benefits are insurable, the Corporation shall prescribe the terms and conditions of such insurance and the premiums charged for insuring such benefits or against such losses shall be subject to the requirements of section 405(c)(3). Such additional benefits shall not be paid from the Single Employer Trust Fund or the Multiemployer Trust Fund.

(d) LIMITATION ON INSURANCE.—The rights of participants and beneficiaries of a plan which is a member of the Corporation shall be insured by the Corporation only to the extent that—

(1) such rights as provided for in the plan do not exceed, with respect to benefits insured under subsection (b) of this section.

(A) in the case of a right to a monthly retire-

ment or disability benefit for the employee himself, the actuarial value of a monthly benefit (with no ancillary benefits) in the form of a single life annuity commencing at age 65 equal to $20 per month per year of credited service, where such $20 is kept up-to-date according to the annual change in the average of the taxable wages of all employees as reported to the Secretary of Health, Education, and Welfare for the first calendar quarter of the calendar year prior to which the determination is made. For purposes of this subparagraph, the term "year of credited service" shall be defined in accordance with rules set by the Corporation which shall take into account the manner in which a plan in practice credits service for benefit purposes.

(B) in the case of a right of one or more dependents or members of the participant's family, or in the case of a right to a lump-sum survivor benefit on account of the death of a participant, an amount no greater than the amount determined in a manner consistent with clause (A);

(2) the plan is terminated more than five years after the date it became a member of the Corporation, except that the board of directors may in its discretion

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authorize insurance payments for such amounts as may be reasonable to any plan terminated in less than five years after the date it became a member of the Corporation where—

(A) such plan has been established and maintained for more than five years prior to its termination;

(B) the board of directors of the Corporation is satisfied that during the period the plan was not a member of the Corporation, it was in substantial compliance with the provisions of this Act; and

(C) such payments will not prevent equitable underwriting of losses of nonforfeitable benefits arising from plan terminations otherwise covered by this title;

(3) such rights were created by a plan amendment which was adopted and which took effect more than five years immediately preceding termination of such plan;

(4) such rights do not accrue to the interest of a participant who is a substantial owner as defined in paragraph (g) with respect to a plan; and

(5) the maximum guaranteed benefit amounts pro-

vided in paragraph (1) shall take effect in accordance with the following table:

If the plan has been in existence for—	The guarantee provided by this part shall be the following percentage of the maximum guaranteed benefit amount provided by paragraph (1):
Less than 2 years	20
At least 2 but less than 3 years	40
At least 3 but less than 4 years	60
At least 4 but less than 5 years	80
5 years or more	100.

(e) CERTAIN SUCCESSOR PLANS.—For purposes of subsection (d), the period a successor plan has been in effect includes the period during which the predecessor plan was in effect.

(f) MAXIMUM AMOUNT PAYABLE UNDER MORE THAN ONE PLAN.—Notwithstanding any other provision of this section, no person may receive any amount from the Corporation with respect to any individual if the receipt of such amount would cause the aggregate benefits received by all persons from the Corporation with respect to such individual to have an actuarial value in excess of the limitations on benefits provided by subsection (d) (1) (A) (determined as of the date of the most recent termination of a plan in which such individual was a participant).

(g) BENEFITS PAYABLE WITH RESPECT TO CERTAIN SUBSTANTIAL OWNERS NOT INSURED.—

(1) IN GENERAL.—No benefit payable under a plan shall be insured under this title with respect to any

individual who, on any day during the plan year in which the plan terminates or during any of the five immediately preceding plan years, was a substantial owner with respect to such plan.

(2) Substantial owner defined.—For purposes of this title, the term "substantial owner" means any individual who—

(A) owns the entire interest in an unincorporated trade or business,

(B) in the case of a partnership is a partner who owns more than 5 per centum of either the capital interest or the profits interest in such partnership, or

(C) in the case of a Corporation, owns more than 5 per centum in value of either (i) the voting stock of such Corporation, or (ii) all the stock of such Corporation.

(3) Constructive ownership.—For purposes of paragraph (2) (C), the constructive ownership rules of section 1563 (e) of the Internal Revenue Code of 1954 shall apply (determined without regard to section 1563 (e) (30) (C)).

(h) Effect of Plan Disqualification.—

(1) In general.—If the Secretary of the Treasury or his delegate determines that any plan does not satisfy

the requirements for being a qualified retirement plan, no benefits accrued under such plan after the disqualification date for the plan shall be guaranteed under this title.

(2) DISQUALIFICATION DATE.—For purposes of this section, the term "disqualification date" means—

(A) except as provided in subparagraph (B), the day on which notice of the determination referred to in paragraph (1) is mailed to the employer, and

(B) in the case of a determination arising in whole or in part from the adoption of an amendment to the plan, the day on which such amendment was adopted.

(3) SPECIAL RULES.—This subsection shall not apply—

(A) if the determination referred to in paragraph (1) is erroneous, and

(B) in the case of an amendment to a plan, if such amendment—

(i) is revoked as of the date it first took effect, or

(ii) is modified as of the date it first took effect in such a way that the Secretary of the

Treasury or his delegate determines that the plan is again a qualified retirement plan.

REPORTABLE EVENTS

SEC. 410. (a) REPORT OF EVENT.—Within thirty days after the plan administrator knows or has reason to know that a reportable event has occurred, he shall notify the Corporation that such event has occurred.

(b) OCCURRENCE OF REPORTABLE EVENT.—For purposes of this section a reportable event occurs—

(1) DISQUALIFICATION OF PLAN.—When the Secretary of the Treasury or his delegate issues notice that a plan has ceased to be a qualified retirement plan or if the Secretary of Labor determines the plan is not in compliance with this title.

(2) BENEFIT DECREASED.—When an amendment of the plan is adopted if, under the amendment, the benefit payable with respect to any participant may be decreased.

(3) DECREASE IN PARTICIPANTS.—When the number of active participants is less than 80 per centum of the number of such participants at the beginning of the plan year, or is less than 75 per centum of the number of such participants at the beginning of the previous plan year.

(4) TERMINATION UNDER INTERNAL REVENUE CODE.—When the Secretary of the Treasury or his delegate determines that there has been a termination or partial termination of the plan within the meaning of section 411 (d) (3) of the Internal Revenue Code of 1954.

(5) FAILURE TO MEET MINIMUM FUNDING STANDARDS.—When the plan fails to meet the minimum funding standards under part 3 of this subtitle.

(6) PLAN UNABLE TO PAY BENEFITS.—When a plan is unable to pay benefits thereunder when due.

(7) CERTAIN DISTRIBUTIONS TO SUBSTANTIAL OWNERS.—When there is a distribution under a plan to a participant who is a substantial owner (within the meaning of section 243 (f) of the Internal Revenue Code of 1954) if—

(A) such distribution has a value of $10,000 or more;

(B) such distribution is not made by reason of the death of the participant; and

(C) immediately after the distribution, the plan has nonforfeitable benefits which are not funded.

For purposes of this paragraph, all distributions to a

participant within any twenty-four-month period shall be treated as one distribution.

(8) Certain reports and hearings.—When a plan files a report required under section 204 (c) of this title or when a hearing is held in regard to a variation to be granted by the Secretary of Labor under section 501 of this title.

(9) Other events.—When any other event occurs which the Corporation determines may be indicative of a need to terminate the plan.

(c) Notification by Secretary of the Treasury.—The Secretary of the Treasury or his delegate shall notify the Corporation—

(1) whenever a reportable event described in paragraph (1), (4), or (5) of subsection (b) occurs, or

(2) whenever any other event occurs which the Secretary of the Treasury or his delegate believes indicates that the plan is not sound.

(d) Notification by Secretary of Labor.—The Secretary of Labor shall notify the Corporation—

(1) wherever a reportable event described in paragraph (1), (5), or (8) of subsection (b) occurs, or

(2) whenever any other event occurs which the Secretary of Labor believes indicates that the plan is not sound.

TERMINATION OF PLAN

SEC. 411. (a) If on application of the administrator of a plan insured under this part, any participant in or beneficiary of such plan, or, on his own motion, the Secretary determines after a hearing under subsection (d) that—

(1) the plan has not met the minimum funding requirements of section 301,

(2) the plan is unable to pay benefits when due, or

(3) the probable long-run loss of the Corporation may reasonably be expected to increase unreasonably if the plan is not terminated;

he may order that the plan be terminated in accordance with subsection (c).

(b) If an employer who sponsors a plan which is not collectively bargained, or in the case of a collectively bargained plan, if the employer or the employee organization which are parties to the collective bargaining agreement apply to the Secretary for authority to terminate a plan insured under this part, the Secretary may terminate such plan in accordance with subsection (c).

(c) In any case in which termination of a plan is authorized under subsection (a) or (b), the Secretary shall, after a hearing in accordance with subsection (d), provide for termination of such plan in whichever of the following

ways he determines will best protect the interest of participants and beneficiaries and the Corporation:

(1) He may order that the Corporation assume the assets of the plan to distribute such assets in accordance with section 112 (subject to section 501), and to pay insurance benefits in accordance with this part.

(2) He may order continuation of the plan until all liabilities are satisfied, with separate administration by a receiver nominated by the Corporation and appointed by the Secretary. If a separate receiver is appointed, no benefits may accrue or become nonforfeitable after the date of termination, the amount of benefits payable under the plan shall not be limited by the amount of insurable benefits, and the plan may be ended under paragraph (1) after the receiver is appointed if the Secretary so directs after a hearing under subsection (d) of this section.

(3) The Secretary may order for a distribution of assets under section 112 without ending the plan under paragraph (1) or appointment of a receiver under paragraph (2).

(4) He may order an alternative method of compliance which is equitable to all concerned.

(d) The hearing referred to in subsection (b) shall be commenced upon application of a plan administrator, any

participant or beneficiary, an employer or other plan sponsor, the Corporation, or, on the motion of the Secretary, Such hearing shall be on the record, with notice and opportunity to be heard by all interested parties. The Secretary is directed to give due regard to protecting the interests of the Corporation and shall take no action which would jeopardize the equitable underwriting of liabilities of other pension plans by the Corporation (or the objectives of the Corporation specified in section 402 (a) of this Act) in any action taken under this section.

MANAGEMENT FUNCTIONS

SEC. 412. (a) TRANSFER OF FUNDS TO THE CORPORATION.—The Secretary shall have authority to—

(1) transfer the funds of the terminated plan to which section 411 (c) (1) applies to the Corporation for purposes of management, payment of benefits, to participants and beneficiaries and, to the extent necessary for such payment, liquidation; and

(2) retain outside financial advisors or consultants to manage, administer, or invest the funds of a terminated plan to which section 411 (c) (1) applies on behalf of the Corporation subject to such rules and guidelines as the Secretary shall determine.

(b) OTHER ALTERNATIVES.—The Secretary may take such other action consistent with actions which may be

taken under section 411 (c), including any combination of the foregoing, as may be appropriate to assure equitable arrangements for payments of vested benefits to participants and beneficiaries under the plan.

FUNCTIONS OF SECRETARY

SEC. 413. (a) EXAMINATION OF THE CORPORATION, ETC.—The Secretary may make such examinations and inspections of the Corporation and require the Corporation to furnish such reports and records or copies thereof as the Secretary may consider necessary or appropriate in the public interest or to effectuate the purposes of this Act.

(b) REPORTS FROM THE CORPORATION.—As soon as practicable after the close of each fiscal year, the Corporation shall submit to the Secretary a written report relative to the conduct of its business, and the exercise of other rights and powers granted by this Act, during such fiscal year. Such report shall include financial statements setting forth the financial position of the Corporation at the end of such fiscal year and the results of its operations (including the source and application of its funds) for such fiscal year and shall include an actuarial evaluation of the expected operations and status of the trust funds over a future period of no less than 5 years including a detailed statement of the actuarial assumptions and methodology used in making such evaluation. The financial statements so included shall be

examined by a Comptroller General. The Secretary shall transmit such report to the President and the Congress with such comment thereon as the Secretary may deem appropriate.

EMPLOYER LIABILITY

SEC. 414. (a) Subject to subsection (e), where the employer or employers contributing to the terminating plan or who terminated the plan are not insolvent (within the meaning of section 1 (19) of the Bankruptcy Act), such employer or employers (or any successor in interest to such employer or employers) shall be liable to reimburse the Corporation for any insurance benefits paid by the Corporation to the beneficiaries of such terminated plan to the extent provided in this section.

(b) An employer, determined by the Corporation to be liable for reimbursement under subsection (a), shall be liable to pay 100 per centum of the present value of employer underfunding of the terminated plan, as of the date of such termination. In no event, however, shall the employer's liability exceed 50 per centum of the net worth of such employer. For purposes of this subsection, the term "present value of employer underfunding" means the lesser of—

(1) the amount of aggregate insurance benefits paid, or

(2) the present value of accrued benefits under the

plan less the sum of the current value of the assets of the plan plus the present value of expected employee contributions to the plan.

(c) The Corporation is authorized to make arrangements with employers, liable under subsection (a), for reimbursement of insurance paid by the Corporation, including arrangements for deferred payment on such terms and for such periods as are deemed equitable and appropriate.

(d) (1) If any employer or employers liable for any amount due under subsection (a) of this section neglects or refuses to pay the same after demand, the amount (including interest) shall be a lien in favor of the United States upon all property and rights in property, whether real or personal, belonging to such employer or employers.

(2) The lien imposed by paragraph (1) of this subsection shall not be valid as against a lien created under section 6321 of the Internal Revenue Code of 1954.

(3) Notice to the lien imposed by paragraph (1) of this subsection shall be filed in a manner and form prescribed by the Corporation. Such notice shall be valid notwithstanding any other provision of law regarding the form and content of a notice of lien.

(4) The Corporation shall promulgate rules and regulations with regard to the release of any lien imposed by paragraph (1) of this subsection.

(e) (1) An employer who elected coverage under the Single Employer Optional Trust Fund shall not be subject to any liability under this section.

(2) No employer shall be liable under this section by reason of his contributions to or sponsorship of a multi-employer plan.

(f) VOLUNTARY CURTAILMENT OF PLAN.—Notwithstanding any other provision of this title or of section 410 or 411 of the Internal Revenue Code of 1954, a pension plan insured under this part may be amended so that neither accrued benefits nor nonforfeitable benefits will accumulate after the date of the amendment. Such amendment shall not by itself be sufficient to cause a termination of such plan or to invoke employer liability except where the plan has not complied with section 302 in the plan year in which the amendment is made or in any susbequent year.

ALLOCATION OF ASSETS

SEC. 415. For purposes of determining the employer liability under section 414 and the payments and distributions to be made under section 411, if any, the Secretary, the plan administrator, the Corporation, or the receiver, as the case may be, shall make such calculation or distribute such assets in accordance with section 112 (subject to any variance under section 501).

EFFECTIVE DATE

SEC. 416. (a) IN GENERAL.—Except as provided in subsection (b), this part shall take effect on the date of enactment of this Act.

(b) TERMINATIONS.—Premiums and benefits payable under this part as a result of plan terminations shall apply with respect to plan years beginning after June 1, 1974, except that in the case of any multiemployer plan, this part shall become effective for the first plan year to which part 3 becomes effective by operation of section 305(b)(2).

PART 5—GENERAL PROVISIONS

ALTERNATIVE METHODS OF COMPLIANCE

SEC. 501. (a) The Secretary on his own motion or after having received the petition of an administrator may, after giving interested persons an opportunity for a hearing, prescribe an alternative method for satisfying any requirement of part 2, 3, or 4, or section 105(b) or 112, with respect to any pension plan or any type of pension plan subject to such requirement if he determines on the record of such hearing (1) that the use of such alternative method is necessary or appropriate to carry out the purposes of this title and that it provides adequate protection to the participants and beneficiaries in the plan, (2) that the application of such requirement of part 2, 3, or 4 or section 105(b) or 112, would—

(A) increase the costs of the parties to the plan to

such an extent that there would result a substantial risk to the voluntary continuation of the plan,

(B) result in a substantial or inequitable curtailment of pension benefit levels or the levels of employees' compensation, or

(C) impose unreasonable administrative burdens with respect to the operation of the plan, having due regard to the particular characteristics of the plan or the type of plan involved; and

(3) that the application of part 2, 3, or 4 or section 105 (b) or 112, or discontinuance of the plan would be adverse to the interests of plan participants in the aggregate.

(b) If the Secretary prescribes an alternative method under subsection (a) for satisfying the requirements of section 302 of this Act, then during the period for which such alternative method is in effect, no amendment to the plan may be adopted which increases liabilities of the plan by reason of (1) any increase in benefits, (2) any change in the accrual of benefits, or (3) any change in the rate at which benefits become nonforfeitable under the plan.

STUDIES

SEC. 502. (a) The Secretary is authorized and directed to undertake research studies relating to pension plans, including but not limited to (1) the effects of this title upon the provisions and costs of pension plans, (2) the role of private pensions in meeting the economic security needs of

the Nation, and (3) the operation of private pension plans including types and levels of benefits, degree of reciprocity or portability, and financial characteristics and practices, and methods of encouraging the growth of the private pension system.

(b) The Secretary is authorized and directed to cooperate with the Congress and its appropriate committees, subcommittees, and staff in supplying data, and any other information, personnel, or resources required by the Congress in any study, examination, or report by the Congress relating to pension and retirement benefit plans established or maintained by States or their political subdivisions.

(c) (1) The Committee on Education and Labor and the Committee on Ways and Means of the House of Representatives shall study retirement plans established and maintained or financed (directly or indirectly) by the Government of the United States, by any State (including the District of Columbia) or political subdivision thereof, or by any agency or instrumentality of any of the foregoing. Such study shall include an analysis of—

(A) the adequacy of existing levels of participation, vesting, and financing arrangements,

(B) existing fiduciary standards,

(C) the unique circumstances affecting mobility of government employees and individuals employed

under Federal procurement, construction, or research contracts or grants, and

(D) the necessity for Federal legislation and standards with respect to such plans.

In determining whether any such plan is adequately financed, each committee shall consider the necessity for minimum funding standards, as well as the taxing power of the government maintaining the plan.

(2) Not later than December 31, 1976, the Committee on Education and Labor and the Committee on Ways and Means shall each submit to the House of Representatives the results of the studies conducted under this subsection, together with such recommendations as may be appropriate.

ENFORCEMENT

SEC. 503. (a) Any person who willfully—

(1) violates any provision of this title (other than section 113 or 511), or any order issued under any such provision; or any requirement of an alternative method prescribed under section 501;

(2) makes, passes, utters, or publishes any statement in any application, report, document, account, or record filed or kept or required to be filed or kept under the provisions of this title, or any rule, regulation, variation, or order under this title, knowing such state-

ment or entry to be false or misleading in any material respect;

(3) forges or counterfeits any instrument, paper, or document, or utters, publishes, or passes as true, any instrument, paper, or document, knowing it to have been forged or counterfeited, for the purposes of influencing in any way the action of the Secretary under this title;

shall upon conviction be fined not more than $10,000 or imprisoned not more than five years, or both, except that in the case of such violation by a person not an individual, the fine imposed upon such person shall be a fine not exceeding $200,000.

(b) Any plan administrator who fails or refuses to comply with a request as provided in section 105 (b) (4) within thirty days (unless such failure or refusal results from matters reasonably beyond the control of the administrator) by mailing the material requested to the last known address of the requesting participant or beneficiary may in the court's discretion be personally liable to such participant or beneficiary in the amount of up to $50 a day from the date of such failure or refusal, and the court may in its discretion order such other relief as it deems proper.

(c) The Secretary shall have power in order to determine whether any person has violated or is about to violate any provision of this title or any rule, regulation, or

order thereunder (including an alternative method prescribed under section 501), to make an investigation and in connection therewith he may require the filing of supporting schedules of the information required to be furnished under section 103 or 104 of this Act and may, where he has reasonable cause, enter such places, inspect such records and accounts, and question such persons as he may deem necessary to enable him to determine the facts relative to such investigation. The Secretary may publish and make available to any interested person or official, information concerning any matter which may be the subject of investigation, and may prepare a report of any investigation undertaken by him. Such report may contain a record of any facts, conditions, practices, or other matters discovered during the course of his investigation and may be published at any time following commencement of such investigation.

(d) For the purposes of any investigation provided for in this title, the provisions of sections 9 and 10 (relating to the attendance of witnesses and the production of books, records, and documents) of the Federal Trade Commission Act (15 U.S.C. 49, 50) are hereby made applicable (without regard to any limitation in such sections respecting persons, partnerships, banks, or common carriers) to the jurisdiction, powers, and duties of the Secretary or any officers designated by him.

(e) Civil actions under this title may be brought—

(1) by a participant or beneficiary—

(A) for the relief provided for in subsection (b) of this section, or

(B) to recover benefits due him under the terms of his plan or to clarify his rights to future benefits under the terms of the plan;

(2) by the Secretary, or by a participant, beneficiary or fiduciary for appropriate relief under section 111 (d); or

(3) by the Secretary, or by a participant, beneficiary, or fiduciary to enjoin any act or practice which violates any provision of this title.

(f) (1) An employee benefit plan may sue or be sued under this title as an entity. Service of summons, subpena, or other legal process of a court upon trustee or administrator of an employee benefit plan in his capacity as such shall constitute service upon the employee benefit plan.

(2) Any money judgment under this title against an employee benefit plan shall be enforceable only against a plan as an entity and shall not be enforceable against any other person unless liability against such person is established in his individual capacity under this title.

(g) (1) Civil actions under this title brought by the Secretary or by a participant, beneficiary, or fiduciary may

be brought in any court of competent jurisdiction, State or Federal. In any action by a participant or beneficiary under subsection (e) (2) or (3), such participant or beneficiary shall maintain such action as a representative of all other participants similarly situated as a class, if (A) the law of the jurisdiction provides for class actions, and, (B) the court is satisfied that the requirements for a class action are not unduly burdensome as applied in the particular circumstances.

(2) Where such an action is brought in a district court of the United States, it may be brought in the district where the plan is administered, where the breach took place, or where a defendant resides or may be found, and process may be served in any other district where a defendant resides or may be found.

(3) Notwithstanding any other law, the Secretary shall have the right to remove an action from a State court to a district court of the United States, if the action is one seeking relief of a kind the Secretary is authorized to sue for under this title. Any other party may remove an action under this title from a State court to a district court of the United States, subject to the requirements contained in section 1331 of title 28, United States Code. Any such removal shall be prior to the trial of the action and shall be to a district court where the Secretary could have initiated such an action.

(4) In all civil actions under this title, attorneys appointed by the Secretary may represent the Secretary except as provided in section 518 (a) of title 28, United States Code (relating to litigation before the Supreme Court of the United States and the Court of Claims).

(h) The district courts of the United States shall have jurisdiction, without respect to the amount in controversy, to grant the relief provided for the subsections (e) (2) and (3) of this section in any action brought by the Secretary. In any action brought under subsection (e) by a participant, beneficiary, or fiduciary, the jurisdiction of the district court shall be subject to the requirements contained in section 1331 of title 28, United States Code.

(i) (1) In any action by a participant or beneficiary, the court in its discretion may allow a reasonable attorney's fee and costs of action to either party.

(2) Except as to actions brought pursuant to subsection (e) (1) (B) of this section and actions brought by the Secretary pursuant to subsections (e) (2) and (e) (3) of this section, no action shall be brought except upon leave of the court obtained upon vertified application and for good cause shown, which application may be made ex parte.

(3) A copy of the complaint in any action under this section by a participant or beneficiary shall be served upon

the Secretary by certified mail who shall have the right, in his discretion, to intervene in the action.

ANNUAL REPORT OF SECRETARY

SEC. 504. The Secretary shall submit annually a report to the Congress covering his administration of this title for the preceding year, and including (1) an explanation of any variances granted under section 501 as well as status report on any plan currently operating with a variance and its progress in achieving compliance with provisions of parts 2, 3, and 4, section 112 and section 105(b), and the projected date for terminating the variance; and (2) such information, data, research findings, and recommendations for further legislation in connection with the matters covered by this title as he may find advisable.

RULES AND REGULATIONS

SEC. 505. (a) The Secretary shall prescribe such rules and regulations as he finds necessary or appropriate to carry out the provisions of this title. Among other things, such rules and regulations may define accounting, technical, and trade terms used in such provisions; and may prescribe the form and detail of all reports required to be made under section 112(i); and may provide for the keeping of books and records, and for the inspection of such books and records. The Secretary may not require that information required by

this title (or regulations thereunder) be submitted on forms prescribed by the Secretary (except as otherwise provided in section 112(i)). Nothing in this subsection authorizes the Secretary to prescribe regulations respecting any matter if any subsection (b) or any other provision of this subtitle provides that regulations respecting such matter shall not be effective unless approved by the Secretary of the Treasury.

(b) Regulations for purposes of part 2 or 3 of this subtitle shall be effective for plan years beginning after December 31, 1975, only if approved by the Secretary of the Treasury.

OTHER AGENCIES AND DEPARTMENTS

SEC. 506. (a) In order to avoid unnecessary expense and duplication of functions among Government agencies, the Secretary may make such arrangements or agreements for cooperation or mutual assistance in the performance of his functions under this title, and the functions of any such agency as he may find to be practicable and consistent with law. The Secretary may utilize, on a reimbursable basis, the facilities or services of any department, agency, or establishment of the United States (including the Comptroller of the Currency) or of any State or political subdivision of a State, including the services of any of its employees, with the lawful consent of such department, agency, or establishment; and each department, agency, or establishment of the United

States (including the Comptroller of the Currency) is authorized and directed to cooperate with the Secretary and, to the extent permitted by law, to provide such information and facilities as he may request for his assistance in the performance of his functions under this title. The Attorney General or his representative shall receive from the Secretary for appropriate action such evidence developed in the performance of his functions under this title as may be found to warrant consideration for criminal prosecution under the provisions of this title or other Federal law.

(b) In order to utilize the facilities of the States, the Secretary may, upon proper application of an appropriate department or agency or any State, authorize such department or agency to require the filing of annual reports as described in section 104 of this Act for those plans exempted under sections 105 (a) (1) (A), (B), and (C) of this Act from the filing requirements. In the case where such authorization is granted the authorized department or agency, with respect to plans domiciled in the State (as determined under rules of the Secretary), shall have the discretion to reject such filing pursuant to the provisions of section 105 (a) (2) and to utilize the remedies set out in section 105 (a) (3) where appropriate. The Secretary may at his discretion appoint such State department or agency as his agent for the purpose of maintaining civil actions under section 503 (e)

with respect to such plans exempted from the filing requirements under section 105.

ADMINISTRATION

SEC. 507. (a) Subchapter B of chapter 5, and chapter 7, of title 5, United States Code (relating to administrative procedure), shall be applicable to this title.

(b) No employee of the Department of Labor shall administer or enforce this title with respect to any employee organization of which he is a member or employer organization in which he has an interest.

APPROPRIATIONS

SEC. 508. There are hereby authorized to be appropriated such sums, without fiscal limitation, as may be necessary to enable the Secretary to carry out his functions and duties under this title.

SEPARABILITY PROVISIONS

SEC. 509. If any provision of this Act, or the application of such provision to any person or circumstances, shall be held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

INTERFERENCE WITH RIGHTS PROTECTED UNDER ACT

SEC. 510. It shall be unlawful for any person to discharge, fine, suspend, expel, discipline, or discriminate against a participant or beneficiary for exercising any right

(b) The filing required by subsection (a) for a plan shall be made not later than 270 days after the beginning of the earliest plan year to which either part 2 or 3 first applies to such plan. In the case of a plan first required to file before December 31, 1975, the Secretary may postpone until not later than December 31, 1975, the first filing date for such plan. Nothing in this subsection shall be construed to prohibit any administrator from filing the application described in subsection (a) at any earlier time.

(c) Upon the filing required by subsection (a), the Secretary shall determine whether such plan is qualified for registration under this section, and if the Secretary finds it qualified, he shall issue a certificate of registration with respect to such plan.

(d) If at any time the Secretary determines that a plan required to qualify under this section is not qualified or is no longer qualified for registration under this part, he shall notify the administrator, setting forth the deficiency or deficiencies in the plan or in its administration or operations which is the basis for the notification given, and he shall further provide the administrator, the employer of the employees covered by the plan (if not the administrator), and the employee organization representing such employees, if any, a reasonable time within which to remove such deficiency or deficiencies. If the Secretary thereafter determines that the

to which he is entitled under the provisions of the plan or this title, or for the purpose of interfering with the attainment of any right to which such participant may become entitled under the plan, or this title. The provisions of section 503 shall be applicable in the enforcement of this section.

COERCIVE INTERFERENCE

SEC. 511. It shall be unlawful for any person through the use of fraud, force, or violence, or threat of the use of force or violence, to restrain, coerce, intimidate, or attempt to restrain, coerce, or intimidate any participant or beneficiary for the purpose of interfering with or preventing the exercise of any right to which he is or may become entitled under the plan, or this title. Any person who willfully violates this section shall be fined $10,000 or imprisoned for not more than one year, or both.

REGISTRATION OF PLANS

SEC. 512. (a) Every administrator of a pension plan to which part 2, 3, or 4 of this subtitle applies shall file with the Secretary an application for registration of such plan. Such application shall be in such form and shall be accompanied by such documents as shall be prescribed by regulation of the Secretary. After qualification under subsection (c), the administrator of such plan shall comply with such requirements as may be prescribed by the Secretary to maintain the plan's qualification under this part.

deficiency or deficiencies have been removed, he shall issue or continue in effect the certificate, as the case may be. If he determines on the record after opportunity for hearing that the deficiency or deficiencies have not been removed, he shall enter an order denying or canceling the certificate of registration, and take such further action as may be appropriate under the enforcement and other provisions of this title.

(e) A pension plan shall be qualifed for registration under this section if it conforms to, and is administered in accordance with the provisions of this title which are applicable to the plan.

(f) The Secretary may, by regulations, provide for the filing of a single report satisfying the reporting and registration requirements of this title.

(g) Where a pension plan filed for registration under this part is amended subsequent to such filing, the administrator shall (pursuant to regulations promulgated by the Secretary) file with the Secretary a copy of the amendment and such additional information and reports as the Secretary by regulation may require, to determine that there is continued compliance under the provisions of this title which are applicable to the plan.

ENFORCEMENT OF REGISTRATION

SEC. 513. Whenever the Secretary—

(1) determines, in the case of a pension plan re-

quired to be registered under section 512, that no application for registration has been filed in accordance with section 512, or

(2) issues an order under section 512 denying or canceling the certificate of registration of a pension plan, or

(3) determines, in the case of a pension plan subject to part 3, that there has been a failure to make required contributions to the plan in accordance with the provisions of this title or to pay required assessments or to pay such other fees or moneys as may be required under this title,

the Secretary may petition any district court of the United States having jurisdiction of the parties, or the United States District Court for the District of Columbia, for an order requiring the employer or other person responsible for the administration of such plan to comply with the requirements of this title as will qualify such plan for registration or to take any action authorized, or required to be taken by the administrator under section 303.

EFFECT ON OTHER LAWS

SEC. 514. (a) It is hereby declared to be the express intent of Congress that, except for actions authorized by section 503 (e) (1) (B) of this Act and except as provided in subsection (b) of this section the provisions of part 1 of this subtitle shall supersede any and all laws of the States

and of political subdivisions thereof insofar as they may now or hereafter relate to the reporting and disclosure responsibilities, and fiduciary responsibilities, of persons acting on behalf of any employee benefit plan to which part 1 applies.

(b) Nothing in part 1 of this subtitle shall be construed to exempt or relieve any person from any law of any State which regulates insurance, banking, or securities or to prohibit a State from requiring that there be filed with a State agency copies of reports required by this title to be filed with the Secretary. No employee benefit plan subject to the provisions of this title (other than a plan established primarily for the purpose of providing death benefits), nor any trust established under such a plan, shall be deemed to be an insurance company or other insurer, bank, trust company, or investment company or to be engaged in the business of insurance or banking for purposes of any law of any State purporting to regulate insurance companies, insurance contracts, banks, trust companies, or investment companies.

(c) It is hereby declared to be the express intent of Congress that the provisions of parts 2, 3, and 4 of this subtitle shall supersede any and all laws of the States and of political subdivisions thereof insofar as they may now or hereafter relate to the nonforfeitability of participant's benefits in employee benefit plans described in section 201 (a) or 301 (a),

the funding requirements for such plans, the adequacy of financing of such plans, portability requirements for such plans, or the insurance of pension benefits under such plans.

(d) Nothing in this section shall be construed to prohibit a delegation of authority by the Secretary to an appropriate State agency as permitted under section 506 of this Act.

(e) Nothing in this title shall be construed to alter, amend, modify, invalidate, impair, or supersede any law of the United States (except as provided in 115(a)) or any rule or regulation issued under any such law.

[From the Congressional Record—House, Feb. 21, 1974]

Reports of Committees on Public Bills and Resolutions

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

* * * * * * *

Mr. Ullman. Committee on Ways and Means. H.R. 12855. A bill to amend the Internal Revenue Code of 1954 to provide pension reform. (Rept. No. 93–807). Referred to the Committee of the Whole House on the State of the Union.

[The texts of H.R. 12855 as reported in the House, and H. Rept. 93–807, follow:]

Union Calendar No. 381

93D CONGRESS
2D SESSION

H. R. 12855

[Report No. 93–807]

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 19, 1974

Mr. ULLMAN (for himself and Mr. SCHNEEBELI) introduced the following bill; which was referred to the Committee on Ways and Means

FEBRUARY 21, 1974

Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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A BILL

To amend the Internal Revenue Code of 1954 to provide pension reform.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SEC. 1000. TABLE OF CONTENTS.

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SEC. 1001. AMENDMENT OF INTERNAL REVENUE CODE OF 1954.

Except as otherwise expressly provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1954.

Subtitle A—Participation, Vesting, Funding, Administration, Etc.

PART I—PARTICIPATION, VESTING, AND FUNDING

SEC. 1011. MINIMUM PARTICIPATION STANDARDS.

Part I of subchapter D of chapter 1 (relating to pension, profit-sharing, stock bonus plans, etc.) is amended by adding at the end thereof the following:

"Subpart B—Special Rules

"Sec. 410. Minimum participation standards.
"Sec. 411. Minimum vesting standards.
"Sec. 412. Minimum funding standards.
"Sec. 413. Collectively bargained plans.
"Sec. 414. Definitions and special rules.
"Sec. 415. Limitations on benefits and contributions under qualified plans.

"SEC. 410. MINIMUM PARTICIPATION STANDARDS.

"(a) PARTICIPATION.—

"(1) MINIMUM AGE AND SERVICE CONDITIONS.—A trust shall not constitute a qualified trust under section 401 (a) if the plan of which it is a part requires, as a condition of participation in the plan, that an employee complete a period of service with the employer or employers maintaining the plan extending beyond the later of the following dates—

"(A) the date on which the employee attains 25 years of age; or

"(B) the date on which he completes 1 year of service.

In the case of any plan which provides that after 3 years of service each participant has a right to 100 percent of his accrued benefit under the plan which is nonforfeitable (within the meaning of section 411) at the time such benefit accrues, subparagraph (B) shall be applied by substituting '3 years of service' for '1 year of service'.

"(2) MAXIMUM AGE CONDITIONS.—A trust shall not constitute a qualified trust under section 401(a) if the plan of which it is a part excludes from participation (on the basis of age) employees who have attained a specified age, unless the plan—

"(A) is a defined benefit plan, and

"(B) such employees begin employment with the employer after they have attained a specified age which is not more than 5 years before the normal retirement age under the plan.

"(3) DEFINITION OF YEAR OF SERVICE.—

"(A) DETERMINATION UNDER REGULATIONS.—For purposes of paragraph (1), the term 'year of service' means a period of service determined under regulations prescribed by the Sec-

retary or his delegate which provide for the calculation of such period on any reasonable and consistent basis.

"(B) REASONABLE BASIS.—For purposes of subparagraph (A), the calculation of any period of service shall not be treated as made on a reasonable basis—

"(i) if the average period of service required for participation in the plan (determined as if one employee commenced his service on each day) is more than 12 months, or

"(ii) if any employee who has completed more than 17 months of continuous service is excluded from participation in the plan by such calculation.

"(C) ADDITIONAL REQUIREMENTS WITH RESPECT TO SEASONAL EMPLOYMENT.—For purposes of subparagraph (A), the calculation of any period of service shall not be treated as made on a reasonable basis in the case of a seasonal employee whose customary employment is for at least 5 months in a 12-month period, if his period of service is treated as less than the period of service he would have had if his customary employment had been nonseasonal.

"(D) SUBSTANTIALLY DIFFERENT WORK PE-

RIODS.—The regulations prescribed under this paragraph shall take into account the customary working period (as expressed in hours, days, weeks, months or years) in any industry where, by the nature of the employment, such period differs substantially from the comparable work period in industry generally.

"(4) BREAKS IN SERVICE.—

"(A) SHORTER BREAKS IN SERVICE.—For purposes of paragraph (3) (A), in the case of any employee who has a break in his service with the employer for a continuous period of not less than 1 year, the calculation of his period of service shall not be treated as not made on a reasonable basis merely because, under the plan, service performed by such employee is not taken into account until he has completed a continuous period of service (not in excess of 1 year) after his return.

"(B) EMPLOYEES 50-PERCENT VESTED.—For purposes of paragraph (3) (A), except as otherwise provided in subparagraph (A), in the case of any employee who has a break in his service with the employer and who, before such break, had a nonforfeitable right to 50 percent or more of his accrued benefit derived from employer contributions, the calculation of his period of service shall not be treated

as made on a reasonable basis if service performed by such employee before the end of such break in service is not taken into account in calculating his period of service.

"(C) 4 CONSECUTIVE YEARS OF SERVICE.—For purposes of paragraph (3)(A), except as otherwise provided in subparagraphs (A) and (D), in the case of any employee who has a break in his service with the employer the calculation of his period of service shall not be treated as made on a reasonable basis if such employee completed 4 consecutive years of service before such break and all service before such break is not taken into account.

"(D) 6-YEAR BREAK IN SERVICE.—For purposes of paragraph (3)(A), except as otherwise provided in subparagraph (B), in the case of any employee who has a break in his service with the employer for a continuous period of not less than 6 years, the calculation of his period of service shall not be treated as not made on a reasonable basis merely because, under the plan, service performed by such employee before the end of such break in service is not taken into account.

"(b) ELIGIBILITY.—

"(1) IN GENERAL.—A trust shall not constitute a

qualified trust under section 401 (a) unless the trust, or two or more trusts, or the trust or trusts and annuity plan or plans are designated by the employer as constituting parts of a plan intended to qualify under section 401 (a) which benefits either—

"(A) 70 percent or more of all employees, or 80 percent or more of all the employees who are eligible to benefit under the plan if 70 percent or more of all the employees are eligible to benefit under the plan, excluding in each case employees who have not satisfied the age and service requirements, if any, prescribed by the plan as a condition of participation, or

"(B) such employees as qualify under a classification set up by the employer and found by the Secretary or his delegate not to be discriminatory in favor of employees who are officers, shareholders, or highly compensated.

"(2) Exclusion of certain employees.—For purposes of paragraph (1), there shall be excluded from consideration—

"(A) employees not included in the plan who are included in a unit of employees covered by an agreement which the Secretary or his delegate finds to be a collective bargaining agreement between

employee representatives and one or more employers, if there is evidence that retirement benefits were the subject of good faith bargaining between such employee representatives and such employer or employers,

"(B) in the case of a trust established or maintained pursuant to an agreement which the Secretary or his delegate finds to be a collective-bargaining agreement between air pilots represented in accordance with title II of the Railway Labor Act and one or more employers, all employees not covered by such agreement, and

"(C) employees not included in the plan who are nonresident aliens and who receive no earned income (within the meaning of section 911 (b)) from the employer which constitutes income from sources within the United States (within the meaning of section 861 (a) (3)).

"(c) EXCLUSION OF GOVERNMENTAL PLANS AND CERTAIN CHURCH PLANS.—This section shall not apply to—

"(1) a governmental plan (within the meaning of section 414 (d)) which meets the requirements of section 401 (a) (3) as in effect on the day before the date of the enactment of this section, and

"(2) a church plan (within the meaning of section 414(e))—

"(A) which meets the requirements of section 401(a)(3) (and, if applicable, section 406(b)(1) or 407(b)(1)) as in effect on the day before the date of the enactment of this section, and

"(B) with respect to which the election provided by subsection (d) has not been made.

"(d) ELECTION BY CHURCH TO HAVE PARTICIPATION, VESTING, FUNDING, AND FORM OF BENEFIT PROVISIONS APPLY.—

"(1) IN GENERAL.—If the church or convention or association of churches which maintains any church plan makes an election under this subsection (in such form and manner, and with such official, as may be prescribed by regulations), then the provisions of this title relating to participation, vesting, funding, and form of benefit (as in effect from time to time) shall apply to such church plan as if such provisions did not contain an exclusion for church plans.

"(2) ELECTION IRREVOCABLE.—An election under this subsection with respect to any church plan shall be binding with respect to such plan, and, once made, shall be irrevocable."

SEC. 1012. MINIMUM VESTING STANDARDS.

(a) IN GENERAL.—Subpart B of part I of subchapter D of chapter 1 is amended by adding after section 410 the following new section:

"SEC. 411. MINIMUM VESTING STANDARDS.

"(a) GENERAL RULE.—Except as provided in subsections (d) and (e), a trust shall not constitute a qualified trust under section 401(a) unless the plan of which such trust is a part satisfies the requirements of paragraphs (1) and (2) of this subsection and the requirements of paragraph (2) of subsection (b), and in the case of a defined benefit plan, also satisfies the requirements of paragraph (1) of subsection (b).

"(1) EMPLOYEE CONTRIBUTIONS.—A plan satisfies the requirements of this paragraph if, under the plan, an employee's rights in his accrued benefit derived from his own contributions are nonforfeitable.

"(2) EMPLOYER CONTRIBUTIONS.—A plan satisfies the requirements of this paragraph if it satisfies the requirements of subparagraph (A), (B), or (C).

"(A) 10-YEAR VESTING.—A plan satisfies the requirements of this subparagraph if, under the plan, an employee who has at least 10 years of service has a nonforfeitable right to 100 percent of

his accrued benefit derived from employer contributions.

"(B) 5- TO 15-YEAR VESTING.—A plan satisfies the requirements of this subparagraph if, under the plan, an employee who has at least 5 years of service has a nonforfeitable right to a percentage of his accrued benefit derived from employer contributions. The percentage shall not be less than the percentage determined under the following table:

"Years of service:	Nonforfeitable percentage
5	25
6	30
7	35
8	40
9	45
10	50
11	60
12	70
13	80
14	90
15 or more	100

"(C) RULE OF 45.—A plan satisfies the requirements of this subparagraph if, under the plan—

"(i) in the case of an employee who is an active participant, who has at least 5 years of service, and with respect to whom the sum of his age and years of service equals or exceeds 45, the employee has a nonforfeitable right to at least 50 percent of his accrued benefit derived from employer contributions, and

"(ii) for each year of service after an em-

ployee first satisfies the requirements of clause (i), the nonforfeitable percentage of his accrued benefit so derived is not less than the percentage determined under the following table:

"Additional years of service:	Nonforfeitable percentage
1	60
2	70
3	80
4	90
5	100

"(D) TRANSITIONAL PERCENTAGES.—In the case of a plan in existence on December 31, 1973, for the first 5 plan years of the plan to which this section applies, in lieu of the nonforfeitable percentages set forth in subparagraph (A), (B), or (C), as the case may be, the nonforfeitable percentage shall be the following percentage of the applicable nonforfeitable percentage determined under such subparagraph:

"Plan year to which this section applies:	Percentage of applicable nonforfeitable percentage determined under subparagraph (A), (B), or (C)
1	50
2	60
3	70
4	80
5	90

"(E) NONFORFEITABLE.—For purposes of this paragraph, a right to an accrued benefit derived from employer contributions shall not be treated as forfeitable merely because the plan provides that it

is not payable where the participant dies (except in the case of a survivor annuity which is payable as provided in section 401 (a) (11)), or that payment of benefits is suspended during periods when the participant has resumed employment with the employer (or, in the case of a multiemployer plan, has resumed employment in the industry), or that plan amendments may be given retroactive application as provided in section 412 (c) (8).

"(3) DETERMINATION OF NONFORFEITABLE PERCENTAGE.—In computing the period of service under the plan for purposes of determining the nonforfeitable percentage under paragraph (2), an employee's entire service with the employer or employers maintaining the plan shall be taken into account, except that the following may be disregarded:

"(A) service before age 25;

"(B) service during a period for which the employee declined to contribute to a plan requiring employee contributions;

"(C) service with an employer during any period for which the employer did not maintain the plan;

"(D) seasonal service not taken into account for purposes of section 410;

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"(E) service broken by periods of suspension of employment, if the rules governing such breaks in service are permissible under section 410(a)(4); and

"(F) service before January 1, 1969, unless the employee has had at least 5 years of service after December 31, 1968.

"(4) YEAR OF SERVICE.—For purposes of this subsection, the term 'year of service' means a period of service determined under regulations prescribed by the Secretary or his delegate which provide for the calculation of such period on any reasonable and consistent basis. The regulations prescribed under this paragraph shall meet the requirements of paragraphs (3) and (4) of section 410(a) and shall be consistent with the regulations prescribed for purposes of such paragraphs.

"(5) ACCRUED BENEFIT.—

"(A) IN GENERAL.—For purposes of this section, the term 'accrued benefit' means—

"(i) in the case of a defined benefit plan, the employee's accrued benefit determined under the plan and, except as provided in subsection (c)(3), expressed in the form of an annual benefit commencing at normal retirement age, or

"(ii) in the case of a plan which is not a defined benefit plan, the balance of the employee's account.

"(B) EFFECT OF CERTAIN DISTRIBUTIONS.—Notwithstanding paragraph (3), for purposes of determining the employee's accrued benefit under the plan, the plan may disregard service performed by the employee with respect to which he has received (i) a distribution of the present value of his entire nonforfeitable benefit if such distribution was less than $1,750, or (ii) a distribution of the present value of his nonforfeitable benefit attributable to such service which he elected to receive. Clause (i) of the first sentence of this subparagraph shall apply only if such distribution was made on termination of the employee's participation in the plan. Clause (ii) of the first sentence of this subparagraph shall apply only if such distribution was made on termination of the employee's participation in the plan or under such other circumstances as may be provided under regulations prescribed by the Secretary or his delegate.

"(6) NORMAL RETIREMENT AGE.—For purposes of this section, the term 'normal retirement age' means the earlier of—

"(A) the time a plan participant attains normal retirement age under the plan, or

"(B) the later of—

"(i) the time a plan participant attains age 65, or

"(ii) the 10th anniversary of the time a plan participant commenced participation in the plan.

"(7) SPECIFICATION OF VESTING SCHEDULE.—A plan shall not satisfy the requirements of paragraph (2) unless the plan specifies whether the vesting schedule specified in subparagraph (A), (B), or (C) of paragraph (2) shall be the applicable minimum schedule for purposes of such plan.

"(8) CHANGES IN VESTING SCHEDULE.—A plan amendment changing any vesting schedule under the plan shall be treated as not satisfying the requirements of paragraph (2) if the nonforfeitable percentage of the accrued benefit derived from employer contributions (determined for any year of service) of any employee who is a participant in the plan on the date such amendment is adopted, or on the date such amendment becomes effective, is less than such nonforfeitable percentage computed under the plan without regard to such amendment.

"(b) ACCRUED BENEFIT REQUIREMENTS.—

"(1) GENERAL RULES.—

"(A) 3-PERCENT METHOD.—A defined benefit plan satisfies the requirements of this paragraph if the annual rate at which any participant accrues retirement benefits under the plan for any year of participation before the end of $33\frac{1}{3}$ years of participation is not less than 3 percent of the maximum benefit to which such participant would be entitled if he commenced participation at the earliest possible entry age under the plan and served continuously until the earlier of age 65 or the normal retirement age specified under the plan. In the case of a plan providing retirement benefits based on compensation during any period, the maximum benefit to which a participant would be entitled shall be determined as if he continued to earn annually the average rate of compensation which he earned during consecutive years of service, not in excess of 10, for which his compensation was the highest. For purposes of this subparagraph, social security benefits and all other relevant factors used to compute benefits shall be treated as remaining constant as of the current year for all years after such current year.

"(B) $133\frac{1}{3}$ PERCENT RULE.—A defined benefit

plan satisfies the requirements of this paragraph unless under the plan the annual rate at which any participant can accrue the retirement benefits payable at normal retirement age under the plan for any plan year is more than 133⅓ percent of the annual rate at which he can accrue benefits for any other plan year; except that an accrual rate for any year before the 11th year of service which exceeds by more than 133⅓ percent the accrual rate for any year after the 10th year of service may be disregarded. For purposes of this subparagraph—

"(i) the accrual rate for any plan year after the participant is eligible to retire with benefits which are not actuarially reduced on account of age or service shall not be taken into account;

"(ii) any amendment to the plan which is in effect for the current year shall be treated as in effect for all other plan years;

"(iii) any change in an accrual rate which does not apply to any participant in the current year shall be disregarded;

"(iv) the fact that benefits under the plan may be payable to certain employees before normal retirement age shall be disregarded; and

"(v) social security benefits and all other relevant factors used to compute benefits shall be treated as remaining constant as of the current year for all years after the current year.

"(C) CERTAIN INSURED DEFINED BENEFIT PLANS.—Notwithstanding subparagraphs (A) and (B), a defined benefit plan satisfies the requirements of this paragraph if such plan—

"(i) is funded exclusively by the purchase of individual insurance contracts, and

"(ii) satisfies the requirements of paragraphs (2) and (3) of section 412(f) (relating to certain insurance contract plans).

but only if an employee's accrued benefit as of any applicable date is not less than the cash surrender value his insurance contracts would have on such applicable date if the requirements of paragraphs (4), (5), and (6) of section 412(f) were satisfied.

"(2) SEPARATE ACCOUNTING REQUIRED IN CERTAIN CASES.—A plan satisfies the requirements of this paragraph if—

"(A) in the case of a defined benefit plan, the plan requires separate accounting for the portion of each employee's accrued benefit derived from any

voluntary employee contributions permitted under the plan; and

"(B) in the case of any plan which is not a defined benefit plan, the plan requires separate accounting for each employee's accrued benefit.

"(3) YEAR OF SERVICE.—For purposes of determining an employee's accrued benefit, the term 'year of service' means a period of service (beginning not later than the date on which the employee first becomes a participant in the plan) as determined under regulations prescribed by the Secretary or his delegate which provide for the calculation of such period on any reasonable and consistent basis.

"(c) ALLOCATION OF ACCRUED BENEFITS BETWEEN EMPLOYER AND EMPLOYEE CONTRIBUTIONS.—

"(1) ACCRUED BENEFIT DERIVED FROM EMPLOYER CONTRIBUTIONS.—For purposes of this section, an employee's accrued benefit derived from employer contributions as of any applicable date is the excess of the accrued benefit for such employee as of such applicable date over the accrued benefit derived from contributions made by such employee as of such date.

"(2) ACCRUED BENEFIT DERIVED FROM EMPLOYEE CONTRIBUTIONS.—

"(A) PLANS OTHER THAN DEFINED BENEFIT

PLANS.—In the case of a plan other than a defined benefit plan, the accrued benefit derived from contributions made by an employee as of any applicable date is—

"(i) except as provided in clause (ii), the balance of the employee's separate account consisting only of his contributions and the income, expenses, gains, and losses attributable thereto, or

"(ii) if a separate account is not maintained with respect to an employee's contributions under such a plan, the amount which bears the same ratio to his total accrued benefit as the total amount of the employee's contributions (less withdrawals) bears to the sum of such contributions and the contributions made on his behalf by the employer (less withdrawals).

"(B) DEFINED BENEFIT PLANS.—

"(i) IN GENERAL.—In the case of a defined benefit plan providing an annual benefit in the form of a single life annuity (without ancillary benefits) commencing at normal retirement age, the accrued benefit derived from contributions made by an employee as of any

applicable date is the annual benefit equal to the employee's accumulated contributions multiplied by the appropriate conversion factor.

"(ii) APPROPRIATE CONVERSION FACTOR. For purposes of clause (i), the term 'appropriate conversion factor' means the factor necessary to convert an amount equal to the accumulated contributions to a single life annuity (without ancillary benefits) commencing at normal retirement age and shall be 10 percent for a normal retirement age of 65 years. For other normal retirement ages the conversion factor shall be determined in accordance with regulations prescribed by the Secretary or his delegate.

"(C) DEFINITION OF ACCUMULATED CONTRIBUTIONS.—For purposes of this subsection, the term 'accumulated contributions' means the total of—

"(i) all mandatory contributions made by the employee,

"(ii) interest (if any) under the plan to the end of the last plan year to which subsection (a)(2) does not apply (by reason of the applicable effective date), and

"(iii) interest on the sum of the amounts

determined under clauses (i) and (ii) compounded annually at the rate of 5 percent per annum from the beginning of the first plan year to which subsection (a) (2) applies (by reason of the applicable effective date) to the date upon which the employee would attain normal retirement age.

For purposes of this subparagraph, the term 'mandatory contributions' means amounts contributed to the plan by the employee which are required as a condition of employment, as a condition of participation in such plan, or as a condition of obtaining benefits under the plan attributable to employer contributions.

"(D) ADJUSTMENTS.—The Secretary or his delegate is authorized to adjust by regulation the conversion factor described in subparagraph (B), the rate of interest described in clause (iii) of subparagraph (C), or both, from time to time as he may deem necessary. The rate of interest shall bear the relationship to 5 percent which the Secretary or his delegate determines to be comparable to the relationship which the long-term money rates and investment yields for the last period of 10 calendar years ending at least 12 months before the beginning

of the plan year bear to the long-term money rates and investment yields for the 10-calendar year period 1964 through 1973. No such adjustment shall be effective for a plan year beginning before the expiration of 1 year after such adjustment is determined and published.

"(E) LIMITATION.—The accrued benefit derived from employee contributions shall not exceed the employee's accrued benefit under the plan.

"(3) ACTUARIAL ADJUSTMENT.—For purposes of this section, in the case of any defined benefit plan, if an employee's accrued benefit is to be determined as an amount other than an annual benefit commencing at normal retirement age, or if the accrued benefit derived from contributions made by an employee is to be determined with respect to a benefit other than an annual benefit in the form of a single life annuity (without ancillary benefits) commencing at normal retirement age, the employee's accrued benefit, or the accrued benefits derived from contributions made by an employee, as the case may be, shall be the actuarial equivalent of such benefit or amount determined under paragraph (1) or (2).

"(d) SPECIAL RULES.—

"(1) COORDINATION WITH SECTION 401(a)

(4).—A plan which satisfies the requirements of this section shall be treated as satisfying any vesting requirements resulting from the application of section 401 (a) (4) unless—

"(A) there has been a pattern of abuse under the plan (such as a firing of employees before their accrued benefits vest), or

"(B) there have been, or there is reason to believe there will be, an accrual of benefits or forfeitures tending to discriminate in favor of employees who are officers, shareholders, or highly compensated.

"(2) PROHIBITED DISCRIMINATION.—Subsection (a) shall not apply to benefits which may not be provided for designated employees in the event of early termination of the plan under provisions of the plan adopted pursuant to regulations prescribed by the Secretary or his delegate to preclude the discrimination prohibited by section 401 (a) (4).

"(3) TERMINATION OR PARTIAL TERMINATION; DISCONTINUANCE OF CONTRIBUTIONS.—Notwithstanding the provisions of subsection (a), a trust shall not constitute a qualified trust under section 401 (a) unless the plan of which such trust is a part provides that—

"(A) upon its termination or partial termination, or

"(B) in the case of a plan to which section 412 does not apply, upon complete discontinuance of contributions under the plan,

the rights of all affected employees to benefits accrued to the date of such termination, partial termination, or discontinuance, to the extent funded as of such date, or the amounts credited to the employees' accounts, are nonforfeitable. This paragraph shall not apply to benefits or contributions which, under provisions of the plan adopted pursuant to regulations prescribed by the Secretary or his delegate to preclude the discrimination prohibited by section 401 (a) (4), may not be used for designated employees in the event of early termination of the plan.

"(4) CLASS YEAR PLANS.—The requirements of subsection (a) (2) shall be deemed to be satisfied in the case of a class year plan if such plan provides that 100 percent of each employee's right to or derived from the contributions of the employer on his behalf with respect to any plan year are nonforfeitable not later than the end of the 5th plan year following the plan year for which such contributions were made (within the meaning of section 404 (a) (6)). For purposes of this

section, the term 'class year plan' means a profit-sharing or stock bonus plan which provides for the separate nonforfeitability of employees' rights to or derived from the contributions for each plan year.

"(5) TREATMENT OF VOLUNTARY EMPLOYEE CONTRIBUTIONS.—In the case of a defined benefit plan which permits voluntary employee contributions, the portion of an employee's accrued benefit derived from such contributions shall be treated as an accrued benefit derived from employee contributions under a plan other than a defined benefit plan.

"(e) EXCLUSION OF CERTAIN PLANS.—This section shall not apply to—

"(1) a governmental plan, if the plan meets any vesting requirements resulting from the application of section 401 (a) (4) as in effect on the day before the date of the enactment of this section,

"(2) a church plan—

"(A) which meets any vesting requirements resulting from the application of section 401 (a) (4) as in effect on the day before the date of the enactment of this section, and

"(B) with respect to which the election provided by section 410 (d) has not been made, and

"(3) a plan which has not, at any time after the

date of the enactment of this section, provided for employer contributions.

"(f) RECORDKEEPING REQUIREMENTS.—

"(1) SINGLE EMPLOYER PLAN.—Except as provided by paragraph (2), every employer shall, in accordance with regulations prescribed by the Secretary or his delegate, maintain records with respect to each of his employees sufficient to determine the benefits due or which may become due to such employees.

"(2) MORE THAN ONE EMPLOYER.—If more than one employer adopts a plan, each such employer shall, in accordance with regulations prescribed by the Secretary or his delegate, furnish to the plan administrator the information necessary for the administrator to maintain the records required by paragraph (1). Such administrator shall maintain the records required by paragraph (1).

"(g) CROSS REFERENCE.—

"For penalty for failure to furnish the information or maintain the records required under this section, see section 6690."

(b) PENALTY FOR FAILURE TO FURNISH INFORMATION.—Subchapter B of chapter 68 (relating to assessable penalties) is amended by adding at the end thereof the following new section:

"SEC. 6690. FAILURE TO FURNISH INFORMATION OR MAINTAIN RECORDS.

"(a) CIVIL PENALTY.—If any person who is required, under section 411(f), to furnish information or maintain records for any plan year fails to comply with such requirement, he shall pay a penalty of $10 for each employee with respect to whom such failure occurs, unless it is shown that such failure is due to reasonable cause.

"(b) DEFICIENCY PROCEDURES NOT TO APPLY.—Subchapter B of chapter 63 (relating to deficiency procedures for income, estate, gift, and certain excise taxes) shall not apply to the assessment or collection of any penalty imposed by subsection (a)."

(c) COMPARABILITY OF PLANS.—Section 401(a) (relating to requirements for qualification) is amended by adding at the end of paragraph (5) the following: "For purposes of determining whether two or more plans of an employer satisfy the requirements of paragraph (4) when considered as a single plan, if the amount of contributions on behalf of the employees allowed as a deduction under section 404 for the taxable year with respect to such plans, taken together, bears a uniform relationship to the total compensation, or the basic or regular rate of compensation, of such employees, the plans shall not be considered discriminatory merely because the rights of employees to, or derived from, the employer

contributions under the separate plans do not become nonforfeitable at the same rate. For purposes of determining whether two or more plans of an employer satisfy the requirements of paragraph (4) when considered as a single plan, if the employees' rights to benefits under the separate plans do not become nonforfeitable at the same rate, but the levels of benefits provided by the separate plans satisfy the requirements of regulations prescribed by the Secretary or his delegate to take account of the differences in such rates, the plans shall not be considered discriminatory merely because of the differences in such rates."

SEC. 1013. MINIMUM FUNDING STANDARDS.

(a) IN GENERAL.—Subpart B of part I of subchapter D of chapter 1 is amended by adding after section 411 the following new section:

"SEC. 412. MINIMUM FUNDING STANDARDS.

"(a) GENERAL RULE.—Except as provided in subsection (e), this section applies to a plan if, for any plan year beginning on or after the effective date of this section for such plan—

"(1) such plan included a trust which qualified (or was determined by the Secretary or his delegate to have qualified) under section 401 (a), or

"(2) such plan satisfied (or was determined by the

Secretary or his delegate to have satisfied) the requirements of section 404 (a) (2) or 405 (a).

A plan to which this section applies shall have satisfied the minimum funding standard for such plan for a plan year at the end of which the plan does not have an accumulated funding deficiency. For purposes of this section and section 4971, the term 'accumulated funding deficiency' means for any plan the excess of the total charges to the funding standard account for all plan years (beginning with the first plan year to which this section applies) over the total credits to such account for such years.

"(b) FUNDING STANDARD ACCOUNT.—

"(1) ACCOUNT REQUIRED.—Each plan to which this section applies shall establish and maintain a funding standard account. Such account shall be credited and charged solely as provided in this section.

"(2) CHARGES TO ACCOUNT.—For a plan year, the funding standard account shall be charged with the sum of—

"(A) the normal cost of the plan for the plan year,

"(B) the amounts necessary to amortize in equal annual installments (until fully amortized)—

"(i) in the case of a plan in existence on January 1, 1974, the unfunded past service

liability under the plan on the first day of the first plan year to which this section applies, over a period of 40 plan years,

"(ii) in the case of a plan which comes into existence after January 1, 1974, the unfunded past service liability under the plan on the first day of the first plan year to which this section applies, over a period of 30 plan years (40 plan years in the case of multiemployer plan),

"(iii) separately, with respect to each plan year, the net increase (if any) in unfunded past service liability under the plan arising from plan amendments adopted in such year, over a period of 30 plan years (40 plan years in the case of a multiemployer plan), and

"(iv) separately, with respect to each plan year, the net experience loss (if any) under the plan, over a period of 15 plan years (20 plan years in the case of a multiemployer plan),

"(C) the excess (if any) for such plan year of—

"(i) the annual amount which would be necessary to amortize in equal annual installments from such year over a period of 20 years

the excess (if any) of the present value of all nonforfeitable benefits (computed using appropriate mortality and interest assumptions) over the value of the plan's assets, over

"(ii) the excess (if any) of the sum of the amounts computed under subparagraphs (A) and (B) of paragraph (2) over the amount computed under paragraph (3) (B), and

"(D) the amount necessary to amortize each waived funding deficiency (within the meaning of subsection (d) (3)) for each prior plan year in equal annual installments (until fully amortized) over a period of 15 plan years.

"(3) CREDITS TO ACCOUNT.—For a plan year, the funding standard account shall be credited with the sum of—

"(A) the amount considered contributed by the employer to or under the plan (within the meaning of section 404 (a) (6)) for the plan year,

"(B) the amount necessary to amortize in equal annual installments (until fully amortized)—

"(i) separately, with respect to each plan year, the net decrease (if any) in unfunded past service liability under the plan arising from

plan amendments adopted in such year, over a period of 30 plan years (40 plan years in the case of a multiemployer plan), and

(ii) separately, with respect to each plan year, the net experience gain (if any) under the plan, over a period of 15 plan years (20 plan years in the case of a multiemployer plan), and

"(C) the amount of the waived funding deficiency (within the meaning of subsection (d) (3)) for the plan year.

"(4) COMBINING AND OFFSETTING AMOUNTS TO BE AMORTIZED.—Under regulations prescribed by the Secretary or his delegate, amounts required to be amortized under paragraph (2) or paragraph (3), as the case may be—

"(A) may be combined into one amount under such paragraph to be amortized over a period determined on the basis of the remaining amortization period for all items entering into such combined amount, and

"(B) may be offset against amounts required to be amortized under the other such paragraph, with the resulting amount to be amortized over a period determined on the basis of the remaining

amortization periods for all items entering into whichever of the two amounts being offset is the greater.

"(5) INTEREST.—The funding standard account (and items therein) shall be charged or credited (as determined under regulations prescribed by the Secretary or his delegate) with interest at the appropriate rate consistent with the rate or rates of interest used under the plan to determine costs.

"(c) SPECIAL RULES.—

"(1) DETERMINATIONS TO BE MADE UNDER FUNDING METHOD.—For purposes of this section, normal costs, accrued liability, past service liabilities, and experience gains and losses shall be determined under the funding method used to determine costs under the plan.

"(2) VALUATION OF ASSETS.—

"(A) IN GENERAL.—For purposes of this section, the value of the plan's assets shall be determined on the basis of any reasonable actuarial method of valuation which takes into account fair market value and which is permitted under regulations prescribed by the Secretary or his delegate.

"(B) ELECTION WITH RESPECT TO BONDS.—The value of a bond or other evidence of indebtedness which is not in default as to principal or interest

may, at the election of the plan administrator, be determined on an amortized basis running from initial cost at purchase to par value at maturity or earliest call date. Any election under this subparagraph shall be made at such time and in such manner as the Secretary or his delegate shall by regulations provide, shall apply to all such evidences of indebtedness, and may be revoked only with the consent of the Secretary or his delegate.

"(3) ACTUARIAL ASSUMPTIONS MUST BE REASONABLE.—For purposes of this section, all costs, liabilities, rates of interest, and other factors under the plan shall be determined on the basis of actuarial assumptions which, in the aggregate, are reasonable.

"(4) TREATMENT OF CERTAIN CHANGES AS EXPERIENCE GAIN OR LOSS.—For purposes of this section, if—

"(A) a change in benefits under the Social Security Act or in other retirement benefits created under Federal or State law, or

"(B) a change in the definition of the term 'wages' under section 3121, or a change in the amount of such wages taken into account under regulations prescribed for purposes of section 401 (a) (5),

results in an increase or decrease in accrued liability under a plan, such increase or decrease shall be treated as an experience loss or gain.

"(5) CHANGE IN FUNDING METHOD OR IN PLAN YEAR REQUIRES APPROVAL.—If the funding method for a plan is changed, the new funding method shall become the funding method used to determine costs and liabilities under the plan only if the change is approved by the Secretary or his delegate. If the plan year for a plan is changed, the new plan year shall become the plan year for the plan only if the change is approved by the Secretary or his delegate.

"(6) FULL FUNDING.—If, as of the close of a plan year, a plan would (but for the application of this paragraph) have an accumulated funding deficiency in excess of the full funding limitation—

"(A) the funding standard account shall be credited with the amount of such excess, and

"(B) all amounts described in paragraphs (2)(B) and (D) and (3)(B) of subsection (b) which are required to be amortized shall be considered fully amortized for purposes of such paragraphs.

"(7) FULL FUNDING LIMITATION.—For purposes of paragraph (6), the term 'full funding limitation' means the excess (if any) of—

"(A) the accrued liability (including normal cost) under the plan (determined under the entry age normal funding method if such accrued liability cannot be directly calculated under the funding method used for the plan), over

"(B) the lesser of the fair market value of the plan's assets or the value of such assets determined under paragraph (2).

"(8) CERTAIN RETROACTIVE PLAN AMENDMENTS.—

"(A) AMENDMENTS WITHOUT APPROVAL OF SECRETARY OF LABOR.—For purposes of this section, any amendment applying to a plan year which—

"(i) is adopted after the close of such plan year but no later than the time prescribed by law (including extensions) for filing the return of the employer for the taxable year with which or within which the plan year ends (or, in the case of a multiemployer plan, no later than 2 years after the close of such plan year), and

"(ii) does not reduce the accrued benefit of any participant determined as of the beginning of the first plan year to which the amendment applies

shall, at the election of the plan administrator, be deemed to have been made on the first day of such plan year.

"(B) AMENDMENTS WITH APPROVAL OF SECRETARY OF LABOR.—For purposes of this section, any amendment adopted after the close of the plan year which reduces benefits, whether or not otherwise nonforfeitable (determined as of the end of the preceding plan year) shall, except for purposes of section 4971 (a) (relating to initial 5 percent tax on failure to meet minimum funding standards), be deemed to have been made on the first day of the first plan year to which such amendment applies if the Secretary of Labor approves such retroactive application of such amendment. The Secretary of Labor shall approve such application on his own motion (or having received the petition of the plan administrator) after giving interested persons an opportunity to be heard and after determining that—

"(i) such amendment affects the plan only to such extent (and for such limited period of time) as is necessary or appropriate to carry out the purposes of the Employee Benefit Security Act of 1974 and to provide adequate protection to the participants and beneficiaries in the plan,

"(ii) but for such amendment, there would result a substantial risk to the voluntary continuation of the plan or a substantial curtailment of pension benefit levels or the levels of employee compensation, and

"(iii) failure to make such amendment would be adverse to the interests of plan participants in the aggregate.

No retroactive amendment may be approved under this subparagraph unless the Secretary of Labor is satisfied that all plan participants and other interested persons (as determined under regulations prescribed by the Secretary of Labor) have received adequate prior notice from the plan administrator of any hearing to be held under this subparagraph. The Secretary of Labor shall notify the Secretary of the Treasury of any such hearing.

"(9) 3-YEAR VALUATION.—For purposes of this section, a determination of experience gains and losses and a valuation of the plan's liability shall be made not less frequently than once every 3 years, except that such determination shall be made more frequently to the extent required in particular cases under regulations prescribed by the Secretary or his delegate.

"(d) VARIANCE FROM MINIMUM FUNDING STANDARD; EXTENSION OF AMORTIZATION PERIODS FOR MULTIEMPLOYER PLANS.—

"(1) WAIVER IN CASE OF SUBSTANTIAL BUSINESS HARDSHIP.—If an employer is unable to satisfy the minimum funding standard for a plan year without substantial business hardship and if application of the standard would be adverse to the interests of plan participants in the aggregate, the Secretary or his delegate may waive the requirements of subsection (a) for such year with respect to all or any portion of the minimum funding standard other than the portion thereof determined under subsection (b) (2) (D). The Secretary or his delegate shall not waive the minimum funding standard with respect to a plan for more than 5 of any 15 consecutive plan years.

"(2) DETERMINATION OF SUBSTANTIAL BUSINESS HARDSHIP.—For purposes of this section, the factors taken into account in determining substantial business hardship shall include (but shall not be limited to) whether or not—

"(A) the employer is operating at an economic loss,

"(B) there is substantial unemployment or underemployment in the trade or business and in the industry concerned,

"(C) the sales and profits of the industry concerned are depressed or declining, and

"(D) it is reasonable to expect that the plan will be continued only if the waiver is granted.

"(3) WAIVED FUNDING DEFICIENCY.—For purposes of this section, the term 'waived funding deficiency' means the portion of the minimum funding standard (determined without regard to subsection (b) (3) (C)) for a plan year waived by the Secretary or his delegate and not satisfied by employer contributions.

"(4) EXTENSION OF AMORTIZATION PERIODS FOR MULTIEMPLOYER PLANS.—If 10 percent or more of the number of employers contributing to or under a multiemployer plan demonstrate to the satisfaction of the Secretary of Labor that they would experience substantial business hardship if required to amortize in equal annual installments any unfunded liability (described in any clause of subsection (b) (2) (B)) of such plan over a period of years and if such requirement would be adverse to the interests of plan participants in the aggregate, then the period of years described in such clause shall be extended for such plan for the period of time

(not in excess of 10 years) which is certified for this purpose by the Secretary of Labor to the Secretary of the Treasury.

"(5) BENEFITS MAY NOT BE INCREASED DURING WAIVER OR EXTENSION PERIOD.—No amendment of the plan which increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan shall be adopted if a waiver under paragraph (1), an extension of time under paragraph (4), or an alternate method prescribed under section 1015(b) of the Employee Benefit Security Act of 1974 is in effect with respect to the plan. If a plan is amended in violation of the preceding sentence, any such waiver, extension of time, or alternate method shall not apply to any plan year ending on or after the day on which such amendment is adopted.

"(e) EXCEPTIONS.—Subsection (a) shall not apply to—

"(1) any profit-sharing or stock bonus plan,

"(2) any insurance contract plan described in subsection (f),

"(3) any governmental plan which meets the requirements of section 401(a)(7) as in effect on the day before the date of the enactment of this section,

"(4) any church plan—

"(A) which meets the requirements of section 401(a)(7) as in effect on the day before the date of the enactment of this section, and

"(B) with respect to which the election provided by section 410(d) has not been made, and

"(5) a plan which has not, at any time after the date of the enactment of this section, provided for employer contributions.

"(f) CERTAIN INSURANCE CONTRACT PLANS.—A plan is described in this subsection if—

"(1) the plan is funded exclusively by the purchase of individual insurance contracts,

"(2) such contracts provide for level annual premium payments to be paid extending not later than the retirement age for each individual participating in the plan, and commencing with the date the individual became a participant in the plan (or, in the case of an increase in benefits, commencing at the time such increase becomes effective),

"(3) benefits provided by the plan are equal to the benefits provided under each contract at normal retirement age under the plan and are guaranteed by an insurance carrier (licensed under the laws of a State

to do business with the plan) to the extent premiums have been paid,

"(4) premiums payable for the plan year, and all prior plan years under such contracts have been paid before lapse or there is reinstatement of the policy,

"(5) no rights under such contracts have been subject to a security interest at any time during the plan year, and

"(6) no policy loans are outstanding at any time during the plan year."

(b) EXCISE TAX ON FAILURE TO MEET MINIMUM FUNDING STANDARDS.—Subtitle D (relating to miscellaneous excise taxes) is amended by adding at the end thereof the following new chapter:

"CHAPTER 43—QUALIFIED PENSION, ETC., PLANS

"Sec. 4971. Taxes on failure to meet minimum funding standards.

"SEC. 4971. TAXES ON FAILURE TO MEET MINIMUM FUNDING STANDARDS.

"(a) INITIAL TAX.—For each taxable year of an employer who maintains a plan to which section 412 applies, there is hereby imposed a tax of 5 percent on the amount of the accumulated funding deficiency under the plan, determined as of the end of the plan year ending with or within such taxable year. The tax imposed by this subsection shall

be paid by the employer responsible for contributing to or under the plan the amount described in section 412(b)(3)(A).

"(b) ADDITIONAL TAX.—In any case in which an initial tax is imposed by subsection (a) on an accumulated funding deficiency and such accumulated funding deficiency is not corrected within the correction period, there is hereby imposed a tax equal to 100 percent of such accumulated funding deficiency to the extent not corrected. The tax imposed by this subsection shall be paid by the employer described in subsection (a).

"(c) DEFINITIONS.—For purposes of this section—

"(1) ACCUMULATED FUNDING DEFICIENCY.—The term 'accumulated funding deficiency' has the meaning given to such term by the last sentence of section 412(a).

"(2) CORRECT.—The term 'correct' means, with respect to an accumulated funding deficiency, the contribution, to or under the plan, of the amount necessary to reduce such accumulated funding deficiency as of the end of a plan year in which such deficiency arose to zero.

"(3) CORRECTION PERIOD.—The term 'correction period' means, with respect to an accumulated funding deficiency, the period beginning with the end of a plan

year in which there is an accumulated funding deficiency and ending 90 days after the date of mailing of a notice of deficiency under section 6212 with respect to the tax imposed by subsection (a), extended—

"(A) by any period in which a deficiency cannot be assessed under section 6213(a), and

"(B) by any other period which the Secretary or his delegate determines is reasonable and necessary to permit a reduction of the accumulated funding deficiency to zero under this section.

"(d) CROSS REFERENCE.—

"For disallowance of deduction for taxes paid under this section, see section 275."

(c) AMENDMENTS TO SECTION 404.—

(1) Paragraph (1) of section 404(a) (relating to deduction for employer contributions to pension trusts) is amended to read as follows:

"(1) PENSION TRUSTS.—In the taxable year when paid, if the contributions are paid into a pension trust, and if such taxable year ends within or with a taxable year of the trust for which the trust is exempt under section 501(a), in an amount determined as follows:

"(A) the amount necessary to satisfy the minimum funding standard provided by section 412(a) for plan years ending within or with such taxable year (or for any prior plan year), if such

amount is greater than the amount determined under subparagraph (B) or (C) (whichever is applicable with respect to the plan),

"(B) the amount necessary to provide with respect to all of the employees under the trust the remaining unfunded cost of their past and current service credits distributed as a level amount, or a level percentage of compensation, over the remaining future service of each such employee, as determined under regulations prescribed by the Secretary or his delegate, but if such remaining unfunded cost with respect to any 3 individuals is more than 50 percent of such remaining unfunded cost, the amount of such unfunded cost attributable to such individuals shall be distributed over a period of at least 5 taxable years, or

"(C) an amount equal to the normal cost of the plan, as determined under regulations prescribed by the Secretary or his delegate, plus, if past service or other supplementary pension or annuity credits are provided by the plan, an amount necessary to amortize such credits in equal annual payments (until fully amortized) over 10 years, as determined under regulations prescribed by the Secretary or his delegate.

In determining the amount deductible in such year under the foregoing limitations, the funding method and the actuarial assumptions shall be those used for such year under section 412, and the maximum amount deductible for such year under the foregoing limitations shall be an amount equal to the full funding limitation for such year determined under section 412. Any amount paid in a taxable year in excess of the amount deductible in such year under the foregoing limitations shall be deductible in the succeeding taxable years in order of time to the extent of the difference between the amount paid and deductible in each such succeeding year and the maximum amount deductible for such year under the foregoing limitations."

(2) Paragraph (6) of section 404 (a) (relating to taxpayers on accrual basis) is amended to read as follows:

"(6) Time when contributions deemed made.—For purposes of paragraphs (1), (2), and (3), a taxpayer shall be deemed to have made a payment on the last day of the preceding taxable year if the payment is on account of such taxable year and is made not later than the time prescribed by law for filing the return for such taxable year (including extensions thereof)."

(3) Paragraph (7) of section 404 (a) (relating to limit on deductions) is amended to read as follows:

"(7) LIMIT ON DEDUCTIONS.—If amounts are deductible under paragraphs (1) and (3), or (2) and (3), or (1), (2), and (3), in connection with two or more trusts, or one or more trusts and an annuity plan, the total amount deductible in a taxable year under such trusts and plans shall not exceed the greater of 25 percent of the compensation otherwise paid or accrued during the taxable year to the beneficiaries of the trusts or plans, or the amount of contributions made to or under the trusts or plans to the extent such contributions do not exceed the amount of employer contributions necessary to satisfy the minimum funding standard provided by section 412 for the plan year which ends with or within such taxable year (or for any prior plan year). In addition, any amount paid into such trust or under such annuity plans in any taxable year in excess of the amount allowable with respect to such year under the preceding provisions of this paragraph shall be deductible in the succeeding taxable years in order of time, but the amount so deductible under this sentence in any one such succeeding taxable year together with the amount allowable under the first sentence of this paragraph shall not exceed 25 percent of the compensation otherwise paid or accrued during such taxable years to the beneficiaries under the trusts or plans. This paragraph shall not have the effect of reducing the amount otherwise deductible

under paragraphs (1), (2), and (3), if no employee is a beneficiary under more than one trust or a trust and an annuity plan."

SEC. 1014. COLLECTIVELY BARGAINED PLANS.

Subpart B of part I of subchapter D of chapter 1 (relating to special rules) is amended by inserting after section 412 the following new section:

"SEC. 413. COLLECTIVELY BARGAINED PLANS.

"(a) APPLICATION OF SECTION.—This section applies to—

"(1) a plan maintained pursuant to an agreement which the Secretary or his delegate finds to be a collective-bargaining agreement between employee representatives and one or more employers, and

"(2) each trust which is a part of such plan.

"(b) GENERAL RULE.—If this section applies to a plan, notwithstanding any other provision of this title—

"(1) PARTICIPATION.—Section 410 shall be applied as if all employees of each of the employers who are parties to the collective-bargaining agreement and who are subject to the same benefit computation formula under the plan were employed by a single employer.

"(2) DISCRIMINATION, ETC.—Sections 401 (a) (4) and 411 (d) (3) shall be applied as if all participants who are employed by employers who are required to

contribute to or under the plan on the same basis were employed by a single employer.

"(3) EXCLUSIVE BENEFIT. For purposes of section 401 (a), in determining whether the plan of an employer is for the exclusive benefit of his employees and their beneficiaries, all plan participants shall be considered to be his employees.

"(4) VESTING.—Section 411 (other than subsection (d) (3)) shall be applied as if all employers who have been parties to the collective-bargaining agreement constituted a single employer, except that the application of any rules with respect to breaks in services shall be made under regulations prescribed by the Secretary or his delegate.

"(5) PLAN YEAR.—The minimum funding standard provided by section 412 shall be determined as if all participants in the plan were employed by a single employer. For purposes of section 412 (other than for purposes of determining the portion of a liability required to be amortized for a plan year), a plan year shall be considered (A) to begin on the date the collective-bargaining agreement is first effective (treating an agreement to extend a prior agreement as a new agreement) and to end on the expiration date of the agreement determined under such agreement, or (B) to be

such other period as may be determined under regulations prescribed by the Secretary or his delegate.

"(6) LIABILITY FOR FUNDING TAX.—For a plan year the liability under section 4971 of each employer who is a party to the collective bargaining agreement shall be determined, in accordance with regulations prescribed by the Secretary or his delegate—

"(A) first on the basis of their respective delinquencies in meeting required employer contributions under the plan, and

"(B) then on the basis of their respective liabilities for contributions under the plan.

"(7) DEDUCTION LIMITATIONS.—Each applicable limitation provided by section 404 (a) shall be determined for a plan year (within the meaning of paragraph (5)) as if all participants in the plan were employed by a single employer. The amounts contributed to or under the plan by each employer who is a party to the agreement, for the portion of his taxable year which is included within such a plan year, shall be considered not to exceed such a limitation if the anticipated employer contributions for such plan year (determined in a manner consistent with the manner in which actual employer contributions for such plan year are determined) do not exceed such limitation. If such antici-

pated contributions exceed such a limitation, the portion of each such employer's contributions which is not deductible under section 404 shall be determined in accordance with regulations prescribed by the Secretary or his delegate."

SEC. 1015. DEFINITIONS AND SPECIAL RULES.

(a) IN GENERAL.—Subpart B of part I of subchapter D of chapter 1 is amended by inserting after section 413 the following new section:

"SEC. 414. DEFINITIONS AND SPECIAL RULES.

"(a) SERVICE FOR PREDECESSOR EMPLOYER.—For purposes of this part, service for a predecessor of the employer shall, to the extent provided in regulations prescribed by the Secretary or his delegate, be treated as service for the employer.

"(b) EMPLOYEES OF CONTROLLED GROUP OF CORPORATIONS.—For purposes of sections 401, 410, 411, and 415, all employees of all corporations which are members of a controlled group of corporations (within the meaning of section 1563 (a), determined without regard to section 1563 (a) (4) and (e) (3) (C)) shall be treated as employed by a single employer. With respect to a plan adopted by more than one such corporation, the minimum funding standard of section 412, the tax imposed by section 4971, and the applicable limitations provided by section 404 (a) shall be

determined as if all such employers were a single employer, and allocated to each employer in accordance with regulations prescribed by the Secretary or his delegate.

"(c) Employees of Partnerships, Proprietorships, Etc., Which Are Under Common Control.—For purposes of sections 401, 410, 411, and 415, under regulations prescribed by the Secretary or his delegate, all employees of trades or businesses (whether or not incorporated) which are under common control shall be treated as employed by a single employer. The regulations prescribed under this subsection shall be based on principles similar to the principles which apply in the case of subsection (b).

"(d) Governmental Plan.—For purposes of this part, the term 'governmental plan' means a plan established and maintained for its employees by the Government of the United States, by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing. The term 'governmental plan' also includes any plan to which the Railroad Retirement Act of 1935 or 1937 applies.

"(e) Church Plan.—

"(1) In general.—Except as provided in paragraph (2), for purposes of this part the term 'church plan' means a plan established and maintained by a

church or by a convention or association of churches which is exempt from tax under section 501.

"(2) CERTAIN UNRELATED BUSINESS OR MULTIEMPLOYER PLANS.—The term 'church plan' does not include a plan—

"(A) which is established and maintained primarily for the benefit of employees (or their beneficiaries) of such church or convention or association of churches who are employed in connection with one or more unrelated trades or businesses (within the meaning of section 513), or

"(B) which is a multiemployer plan, if one or more of the employers in the plan is not a church (or a convention or association of churches) which is exempt from tax under section 501.

"(3) CERTAIN CHURCH AGENCIES NOW UNDER CHURCH PLAN.—For purposes of this subsection, if—

"(A) a plan described in paragraph (1) was in existence on January 1, 1974, and

"(B) such plan on such date covered employees of any organization which is (i) exempt from tax under section 501 and (ii) an agency of the church or convention or association of churches which established and maintained the plan,

then the employees of such agency who are at any time covered by such plan shall be treated as employees whose employer is such church or convention or association of churches, as the case may be.

"(f) MULTIEMPLOYER PLAN.—

"(1) IN GENERAL.—For purposes of this part, the term 'multiemployer plan' means a plan—

"(A) to which more than one employer is required to contribute,

"(B) which is maintained pursuant to a collective bargaining agreement between employee representatives and more than one employer,

"(C) under which the amount of contributions made under the plan for a plan year by each employer making such contributions is less than 50 percent of the aggregate amount of contributions made under the plan for that plan year by all employers making such contributions, and

"(D) which satisfies such other requirements as the Secretary or his delegate may by regulations prescribe.

"(2) SPECIAL RULES.—For purposes of this subsection—

"(A) If a plan is a multiemployer plan within the meaning of paragraph (1) for any plan year,

subparagraph (C) of paragraph (1) shall be applied by substituting '75 percent' for '50 percent' for each subsequent plan year until the first plan year following a plan year in which the plan had one employer who made contributions of 75 percent or more of the aggregate amount of contributions made under the plan for that plan year by all employers making such contributions.

"(B) All corporations which are members of a controlled group of corporations (within the meaning of section 1563 (a), determined without regard to section 1563 (e) (3) (C)) shall be deemed to be one employer.

"(g) Plan Administrator.—For purposes of this part, the term 'plan administrator' means—

"(1) the person specifically so designated by the terms of the instrument under which the plan is operated;

"(2) in the absence of a designation referred to in paragraph (1)—

"(A) in the case of a plan maintained by a single employer, such employer,

"(B) in the case of a plan maintained by two or more employers or jointly by one or more employers and one or more employee organizations,

the association, committee, joint board of trustees, or other similar group of representatives of the parties who maintained the plan, or

"(C) in any case to which subparagraph (A) or (B) does not apply, such other person as the Secretary or his delegate may prescribe.

"(h) TAX TREATMENT OF CERTAIN CONTRIBUTIONS.—

"(1) IN GENERAL.—For purposes of this title, any amount contributed—

"(A) to an employees' trust described in section 401 (a), or

"(B) under a plan described in section 403 (a) or 405 (a),

shall not be treated as having been made by the employer if it is designated as an employee contribution.

"(2) DESIGNATION BY UNITS OF GOVERNMENT.—For purposes of paragraph (1), in the case of any plan established by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing, where the contributions of employing units are designated as employee contributions but where any employing unit picks up the contributions, the contributions so picked up shall be treated as employer contributions.

"(i) DEFINED CONTRIBUTION PLAN.—For purposes of this part, the term 'defined contribution plan' means a plan which provides for an individual account for each participant and for benefits based solely on the amount contributed to the participant's account, and any income, expenses, gains and losses, and any forfeitures of accounts of other participants which may be allocated to such participant's account.

"(j) DEFINED BENEFIT PLAN.—For purposes of this part, the term 'defined benefit plan' means any plan which is not a defined contribution plan.

"(k) REGULATIONS UNDER THIS SUBPART TO BE APPROVED BY SECRETARY OF LABOR.—Any regulation prescribed by the Secretary or his delegate for purposes of this subpart, other than a regulation relating to the application of section 401 (a) (4) or 415 or to subsection (h) of this section, shall be effective for any plan year beginning after December 31, 1975, only if approved by the Secretary of Labor."

(b) VARIATIONS FROM CERTAIN VESTING AND FUNDING REQUIREMENTS FOR MULTIEMPLOYER PLANS.—In the case of any multiemployer plan (within the meaning of section 414 (f) of the Internal Revenue Code of 1954), the Secretary of Labor on his own motion or after having received the petition of a plan administrator may, after giving interested persons an opportunity to be heard, prescribe an

alternate method which will satisfy the requirements of subsection (a) (2) of section 411 of the Internal Revenue Code of 1954, subsection (b) (1) of such section 411, paragraphs (2) and (3) of section 412 (b) of such Code, or section 412 (c) (5) of such Code for such limited period of time as is necessary or appropriate to carry out the purposes of this Act and which will provide adequate protection to the participants and beneficiaries in the plan, whenever he finds that the application of such requirements would—

(1) increase the costs of the parties to the plan to such an extent that there would result a substantial risk to the voluntary continuation of the plan or a substantial curtailment of benefit levels or the levels of employees' compensation, or

(2) impose unreasonable administrative burdens with respect to the operation of the plan, having due regard to the particular characteristics of the plan or the type of plan involved,

and where the application of such requirements or discontinuance of the plan would be adverse to the interests of plan participants in the aggregate. No alternate method may be prescribed under this subsection unless the Secretary of Labor is satisfied that all plan participants and other interested persons (as determined under regulations prescribed by the Secretary of Labor) have received adequate prior notice

from the plan administrator of any hearing to be held under this subsection. The Secretary of Labor shall notify the Secretary of the Treasury of any such hearing.

SEC. 1016. CONFORMING AND CLERICAL AMENDMENTS.

(a) CONFORMING AMENDMENTS.—

(1) Section 275 (a) (relating to denial of deduction for certain taxes) is amended by adding at the end thereof the following new paragraph:

"(6) Taxes imposed by chapter 42 and chapter 43."

(2) Section 401 (a) (relating to requirements for qualification) is amended—

(A) by striking out paragraph (3) and inserting in lieu thereof:

"(3) if the plan of which such trust is a part satisfies the requirements of section 410 (relating to minimum participation standards); and",

(B) by striking out "paragraph (3) (B) or (4)" in paragraph (5) and inserting in lieu thereof "paragraph (4) or section 410 (b) (without regard to paragraph (1) (A) thereof)", and

(C) by striking out paragraph (7) and inserting in lieu thereof:

"(7) A trust shall not constitute a qualified trust under this section unless the plan of which such trust is

a part satisfies the requirements of section 411 (relating to minimum vesting standards)."

(3) Section 404 (a) (2) (relating to deduction for contributions of an employer to employee's annuity plan) is amended by striking out "and (8)," and inserting in lieu thereof "(8), (11), (12), (13), (14), and (15),".

(4) Section 406 (b) (1) (relating to certain employees of foreign subsidiaries) is amended by striking out "paragraphs (3) (B) and (4) of section 401 (a)" and inserting in lieu thereof "section 401 (a) (4) and section 410 (b) (without regard to paragraph (1) (A) thereof)".

(5) Section 407 (b) (1) (relating to certain employees of domestic subsidiaries engaged in business outside the United States) is amended by striking out "paragraphs (3) (B) and (4) of section 401 (a)" and inserting in lieu thereof "section 401 (a) (4) and section 410 (b) (without regard to paragraph (1) (A) thereof)".

(6) Section 805 (d) (1) (C) (relating to definition of pension plan reserves) is amended by striking out "and (8)" and inserting in lieu thereof "(8), (11), (12), (13), (14), and (15)".

(7) Section 6161 (b) (1) (relating to extensions

of time for paying tax) is amended by striking out "or 42" and inserting in lieu thereof "42 or 43". The second sentence of section 6161 (b) is amended by striking out "or 42" and inserting in lieu thereof ", 42, or chapter 43".

(8) Section 6201 (d) (relating to assessment authority) is amended by striking out "and chapter 42" and inserting in lieu thereof ", chapter 42, and chapter 43".

(9) Section 6211 (defining deficiency) is amended—

(A) by striking out so much of subsection (a) as precedes paragraph (1) thereof and inserting in lieu thereof the following:

"(a) IN GENERAL.—For purposes of this title in the case of income, estate, and gift taxes imposed by subtitles A and B and excise taxes imposed by chapters 42 and 43, the term 'deficiency' means the amount by which the tax imposed by subtitle A or B, or chapter 42 or 43, exceeds the excess of—"; and

(B) by striking out "chapter 42" in subsection (b) (2) and inserting in lieu thereof "chapter 42 or 43".

(10) Section 6212 (relating to notice of deficiency) is amended—

(A) by striking out "chapter 42" in subsection (a) and inserting in lieu thereof "chapter 42 or 43",

(B) by striking out "or chapter 42" in subsection (b)(1) and inserting in lieu thereof "chapter 42, or chapter 43",

(C) by striking out "chapter 42, and this chapter" in subsection (b)(1) and inserting in lieu thereof "chapter 42, chapter 43, and this chapter", and

(D) by striking out "of the same decedent," in subsection (c) and inserting in lieu thereof "of the same decedent, of chapter 43 tax for the same taxable years,".

(11) Section 6213 (relating to restrictions applicable to deficiencies and petition to Tax Court) is amended—

(A) by striking out "or chapter 42" in subsection (a) and inserting in lieu thereof ", chapter 42 or 43",

(B) by striking out the heading of subsection (e) and inserting in lieu thereof:

"(e) SUSPENSION OF FILING PERIOD FOR CERTAIN EXCISE TAXES.—",

(C) by striking out "or 4945 (relating to

taxes on taxable expenditures)" in subsection (e) and inserting in lieu thereof "4945 (relating to taxes on taxable expenditures), 4971 (relating to excise taxes on failure to meet minimum funding standard)"; and

(D) by striking out "or 4945 (h) (2)" in subsection (e) and inserting in lieu thereof ", 4945 (i) (2), or 4971 (c) (3),".

(12) Section 6214 (relating to determinations by Tax Court) is amended—

(A) by amending the heading of subsection (c) to read as follows:

"(c) TAXES IMPOSED BY SECTION 507 OR CHAPTER 42 or 43.—",

(B) by inserting after "chapter 42" each place it appears in subsection (c) "or 43"; and

(C) by striking out "chapter 42" in subsection (d) and inserting in lieu thereof "chapter 42 or 43".

(13) Section 6344 (a) (1) (relating to cross references) is amended by striking out "chapter 42" and inserting in lieu thereof "chapter 42 or 43".

(14) Section 6501 (e) (3) (relating to limitations on assessment and collection) is amended by striking

out "chapter 42" and inserting in lieu thereof "chapter 42 or 43".

(15) Section 6503 (relating to suspension of running of period of limitations) is amended—

(A) by striking out "chapter 42 taxes)" in subsection (a) (1) and inserting in lieu thereof "certain excise taxes)", and

(B) by inserting after "section 507" in subsection (h) "or section 4971", and by striking out "or 4945 (h) (2)" in subsection (h) and inserting in lieu thereof "4945 (i) (2), or 4971 (c) (3)".

(16) Section 6512 (relating to limitations in case of petition to Tax Court) is amended by striking out "chapter 42" each place it appears therein and inserting in lieu thereof "chapter 42 or 43".

(17) Section 6601 (d) (relating to interest on underpayment, nonpayment, or extensions of time for payment of tax) is amended by—

(A) striking out in the heading thereof "CHAPTER 42" and inserting in lieu thereof "CHAPTER 42 OR 43", and

(B) striking out "chapter 42" and inserting in lieu thereof "certain excise".

(18) Section 6653 (c) (1) (relating to income, estate, gift, and chapter 42 taxes) is amended by strik-

ing out "chapter 42" each place it appears therein (including the heading) and inserting in lieu thereof "certain excise".

(19) Section 6659(b) (relating to applicable rules) is amended by striking out "chapter 42" and inserting in lieu thereof "certain excise".

(20) Section 6676(b) (relating to failure to supply identifying numbers) is amended by striking out "chapter 42" and inserting in lieu thereof "and certain excise".

(21) Section 6677(b) (relating to failure to file information returns with respect to certain foreign trusts) is amended by striking out "chapter 42" and inserting in lieu thereof "and certain excise".

(22) Section 6679(b) (relating to failure to file returns as to organization or reorganization of foreign corporations and as to acquisitions of their stock) is amended by striking out "chapter 42" and inserting in lieu thereof "and certain excise".

(23) Section 6682(b) (relating to false information with respect to withholding allowances based on itemized deductions) is amended by striking out "chapter 42" and inserting in lieu thereof "and certain excise".

(24) The heading of section 6861 (relating to

jeopardy assessments of income, estate, and gift taxes) is amended by striking out "AND GIFT TAXES.", and inserting in lieu thereof ", GIFT, AND CERTAIN EXCISE TAXES."

(25) Section 6862 (relating to jeopardy assessment of taxes other than income, estate, and gift taxes) is amended—

(A) by striking out "AND GIFT TAXES.", in the heading and inserting in lieu thereof ", GIFT, AND CERTAIN EXCISE TAXES.",

(B) by striking out "and gift tax)" in subsection (a) and inserting in lieu thereof "gift tax, and certain excise taxes)".

(26) Section 7422 (relating to civil actions for refund) is amended—

(A) by striking out "chapter 42" and inserting in lieu thereof "chapter 42 or 43" in subsection (e),

(B) by striking out "CHAPTER 42" in the heading of subsection (g) and inserting in lieu thereof "CHAPTER 42 OR 43",

(C) by striking out "or 4945" in subsection (g)(1) and inserting in lieu thereof "4945 or 4971",

(D) by striking out "section 4945(a) (relat-

ing to initial taxes on taxable expenditures)" in subsection (g)(1) and inserting in lieu thereof "section 4945(a) (relating to initial taxes on taxable expenditures), 4971(a) (relating to initial tax on failure to meet minimum funding standard)",

(E) by striking out "or section 4945(b) (relating to additional taxes on taxable expenditures)" in subsection (g)(1) and inserting in lieu thereof "section 4945(b) (relating to additional taxes on taxable expenditures), or section 4971(b) (relating to additional tax on failure to meet minimum funding standard)", and

(F) by striking out "or 4945" in paragraphs (2) and (3) of subsection (g) and inserting in lieu thereof "4945, or 4971".

(27) Section 6204(b) (relating to supplemental assessments) is amended by striking out "and gift taxes" and inserting in lieu thereof "gift, and certain excise taxes".

(b) Clerical Amendments.—

(1) Part I of subchapter D of chapter 1 is amended by inserting after the heading and before the table of sections the following:

"Subpart A. General rule.
"Subpart B. Special rules.

"Subpart A—General Rule".

(2) The table of chapters for subtitle D is amended by adding at the end thereof the following new item:

"Chapter 43. Qualified pension, etc., plans."

(3) The table of sections for subchapter B of chapter 68 is amended—

(A) by striking out the item relating to the section captioned "Assessable penalties with respect to information required to be furnished under section 7654" and inserting in lieu thereof:

"Sec. 6688. Assessable penalties with respect to information required to be furnished under section 7654.",

(B) by inserting at the end thereof the following new item:

"Sec. 6690. Failure to furnish information or maintain records."

(4) Subchapter B of chapter 68 is amended by striking out the heading of the section immediately preceding section 6689 and inserting in lieu thereof:

"SEC. 6688. ASSESSABLE PENALTIES WITH RESPECT TO INFORMATION REQUIRED TO BE FURNISHED UNDER SECTION 7654."

(5) The table of sections for part II of subchapter A of chapter 70 is amended by striking out "and gift taxes" in the items relating to sections 6861 and 6862 and inserting in lieu thereof "gift, and certain excise taxes".

SEC. 1017. EFFECTIVE DATES.

(a) GENERAL RULE.—Except as otherwise provided in this section, the amendments made by this part shall apply in the case of plan years beginning after the date of the enactment of this Act.

(b) EXISTING PLANS.—

(1) IN GENERAL.—Except as otherwise provided in subsections (c) and (d), in the case of a plan in existence on January 1, 1974, the amendments made by this part shall apply in the case of plan years beginning after December 31, 1975. In any case described in paragraph (2) or (3) of this subsection, such paragraphs shall apply if (and only if) their application results in a later effective date for the amendments made by this part.

(2) COLLECTIVE-BARGAINING AGREEMENTS.—In the case of a plan maintained on January 1, 1974, pursuant to one or more agreements which the Secretary of the Treasury or his delegate finds to be collective-bargaining agreements between employee representatives and one or more employers, paragraph (1) shall be applied by substituting for December 31, 1975, the earlier of—

(A) the date on which the last of such agreements relating to the plan terminates (determined

without regard to any extension thereof agreed to after the date of the enactment of this Act), or

(B) December 31, 1980, but in no event shall a date earlier than December 31, 1976, be substituted.

(3) LABOR ORGANIZATION CONVENTIONS.—In the case of a plan maintained by a labor organization which is exempt from tax under section 501(c)(5) of the Internal Revenue Code of 1954 exclusively for the benefit of its employees and their beneficiaries, paragraph (1) shall be applied by substituting for December 31, 1975, the earlier of—

(A) the date on which the second convention of such labor organization held after the date of the enactment of this Act ends, or

(B) December 31, 1980, but in no event shall a date earlier than December 31, 1976, be substituted.

(c) EXISTING PLANS MAY ELECT NEW PROVISIONS.—In the case of a plan in existence on January 1, 1974, the provisions of the Internal Revenue Code of 1954 relating to participation, vesting, funding, and form of benefit (as in effect from time to time) shall apply in the case of the plan year (which begins after the date of the enactment of this Act but before the applicable date determined under sub-

section (b)) selected by the plan administrator and to all subsequent plan years, if the plan administrator elects (in such manner and at such time as the Secretary of the Treasury or his delegate shall by regulations prescribe) to have such provisions so apply. Any election made under this subsection, once made, shall be irrevocable.

(d) CERTAIN DEFINITIONS.—Section 414 of the Internal Revenue Code of 1954 (other than subsections (b) and (c) of such section 414), as added by section 1015(a) of this Act, shall take effect on the date of the enactment of this Act.

PART II—CERTAIN OTHER PROVISIONS RELATING TO QUALIFIED RETIREMENT PLANS

SEC. 1021. ADDITIONAL PLAN REQUIREMENTS.

(a) JOINT AND SURVIVOR ANNUITY REQUIREMENT.—

(1) IN GENERAL.—Section 401(a) (relating to requirements for qualification) is amended by inserting after paragraph (10) the following new paragraph:

"(11) (A) A trust shall not constitute a qualified trust under this section if the plan of which such trust is a part provides for the payment of benefits in the form of an annuity and if—

"(i) the participant and his spouse have been

married throughout the 5-year period ending on the annuity starting date, or

"(ii) the participant dies after his earliest retirement age and before the annuity starting date, and the participant and his spouse have been married throughout the 5-year period ending on the date of his death,

unless such plan provides for the payment of annuity benefits in a form having the effect of a qualified joint and survivor annuity.

"(B) A plan shall be treated as satisfying the requirements of this paragraph if, under the plan, each participant has a reasonable period (as prescribed by the Secretary or his delegate by regulations) before the annuity starting date during which he may elect in writing (after having received a written explanation of the terms and conditions of the joint and survivor annuity and the effect of an election under this subparagraph) not to take such joint and survivor annuity.

"(C) A plan shall not be treated as not satisfying the requirements of this paragraph merely because, under the plan, any election under subparagraph (B), and any revocation of any such election, does not become effective (or ceases to be effective) if the participant dies within a period (not in excess of 2 years) beginning on the date of such election or revocation, as the case may be.

"(D) For purposes of this paragraph—

"(i) the term 'annuity starting date' means the first day of the first period for which an amount is received as an annuity (whether by reason of retirement or by reason of disability),

"(ii) the term 'earliest retirement age' means the earliest date on which, under the plan, the participant could elect to receive retirement benefits, and

"(iii) the term 'qualified joint and survivor annuity' means an annuity for the life of the participant with a survivor annuity for the life of his spouse which is not contingent upon survivorship of such spouse beyond the earliest age at which the participant could elect to receive retirement benefits under the plan and which is not less than one-half of the amount of the annuity payable during the joint lives of the participant and his spouse.

"(E) This paragraph shall apply only if—

"(i) the annuity starting date did not occur before the effective date of this paragraph, and

"(ii) the participant was an active participant in the plan on or after such effective date."

(2) CERTAIN ADDITIONAL REQUIREMENTS APPLY ONLY TO PLANS TO WHICH VESTING REQUIREMENTS

APPLY.—Section 401 (a) (relating to requirements for qualification) is amended by adding at the end thereof the following new sentences: "Paragraphs (11), (12), (13), (14), (15), and (19) shall apply only in the case of a plan to which section 411 (relating to minimum vesting standards) applies. Any regulation prescribed by the Secretary or his delegate for purposes of paragraph (11), (12), (13), (14), (15), or (19) shall be effective for any plan year beginning after December 31, 1975, only if approved by the Secretary of Labor."

(b) REQUIREMENTS IN CASE OF MERGERS AND CONSOLIDATIONS OF PLANS OR TRANSFERS OF PLAN ASSETS.—Section 401 (a) is amended by inserting after paragraph (11) the following new paragraph:

"(12) A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that—

"(A) in the case of any merger or consolidation with, or transfer of assets or liabilities to, any other plan after October 22, 1973, each participant in the plan would (if the plan then terminated) receive a benefit immediately after the merger, consolidation, or transfer which is equal to or greater than the benefit he would have been entitled to

receive immediately before the merger, consolidation, or transfer (if the plan had then terminated); and

"(B) no merger, consolidation, or transfer of assets or liabilities to another plan may be made after the date of the enactment of this paragraph unless the plan administrator has filed with the Secretary or his delegate, at least 30 days before such merger, consolidation, or transfer, an actuarial statement of valuation evidencing compliance with the requirements of subparagraph (A)."

(c) RETIREMENT BENEFITS MAY NOT BE ASSIGNED OR ALIENATED.—Section 401(a) is amended by inserting after paragraph (12) the following new paragraph:

"(13) A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that benefits provided under the plan may not be assigned or alienated. For purposes of the preceding sentence, there shall not be taken into account any voluntary and revocable assignment of not to exceed 10 percent of any benefit payment."

(d) REQUIREMENT THAT PAYMENT OF BENEFITS BEGIN NOT LATER THAN WHEN THE PARTICIPANT ATTAINS AGE 65 OR HAS COMPLETED 10 YEARS OF PARTICI-

PATION.—Section 401 (a) is amended by inserting after paragraph (13) the following new paragraph:

"(14) A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that, unless the participant otherwise elects, the payment of benefits under the plan to the participant will begin not later than the 60th day after the latest of the close of the plan year in which—

"(A) the date on which the participant attains age 65,

"(B) occurs the 10th anniversary of the year in which the participant commenced participation in the plan, or

"(C) the participant terminates his service with the employer."

(e) REQUIREMENT THAT PLAN BENEFITS ARE NOT DECREASED BY CERTAIN SOCIAL SECURITY INCREASES.—Section 401 (a) is amended by inserting after paragraph (14) the following new paragraph:

"(15) a trust shall not constitute a qualified trust under this section unless under the plan of which such trust is a part—

"(A) in the case of a participant or beneficiary who is receiving benefits under such plan, or

"(B) in the case of a participant who is sepa-

rated from the service and who has nonforfeitable rights to benefits,

such benefits are not decreased by reason of any increase in the benefit levels payable under title II of the Social Security Act, if such increase in benefit levels takes place after the date of the enactment of this paragraph or (if later) the date of first receipt of such benefits or the date of such separation, as the case may be."

(f) REQUIREMENT OF NONFORFEITABILITY IN CASE OF CERTAIN WITHDRAWALS.—Section 401 (a) is amended by inserting after paragraph (18) the following new paragraph:

"(19) A trust shall not constitute a qualified trust under this section if under the plan of which such trust is a part any part of a participant's accrued benefit derived from employer contributions, to the extent nonforfeitable as determined under section 411, is forfeitable solely because of withdrawal by such participant of any amount attributable to the benefit derived from contributions made by such participant."

SEC. 1022. MISCELLANEOUS PROVISIONS.

(a) REQUIREMENT THAT PLAN NOT BE DISCRIMINATORY.—Section 401 (a) (4) (disqualifying discriminatory plans) is amended to read as follows:

"(4) If the contributions or the benefits provided under the plan do not discriminate in favor of employees who are—

"(A) officers,

"(B) shareholders, or

"(C) highly compensated."

(b) AMENDMENTS RELATING TO SELF-EMPLOYED INDIVIDUALS AND OWNER-EMPLOYEES.—

(1) AMENDMENT OF SECTION 401(a)(10).—So much of subparagraph (A) of section 401 (a) (10) as precedes clause (i) thereof is amended to read as follows:

"(A) paragraph (3), the first and second sentences of paragraph (5), and section 410 shall not apply, but—".

(2) AMENDMENT OF SECTION 401(d)(3).—Section 401 (d) (3) (relating to additional requirements for qualification of trusts and plans benefiting owner-employees) is amended to read as follows:

"(3) (A) The plan benefits each employee having 3 or more years of service (within the meaning of section 410 (a) (3)).

"(B) For purposes of subparagraph (A), the term 'employee' does not include—

"(i) any employee included in a unit of em-

ployees covered by a collective bargaining agreement described in section 410(b)(2)(A), and

"(ii) any employee who is a nonresident alien individual described in section 410(b)(2)(C)."

(c) PERSONS OTHER THAN BANKS MAY BE TRUSTEES OF TRUSTS BENEFITING OWNER-EMPLOYEES.—

(1) The first sentence of section 401(d)(1) is amended to read as follows: "In the case of a trust which is created on or after October 10, 1962, or which was created before such date but is not exempt from tax under section 501(a) as an organization described in subsection (a) on the day before such date, the assets thereof are held by a bank or other person who demonstrates to the satisfaction of the Secretary or his delegate that the manner in which he will hold such assets will be consistent with the requirements of this section. A trust shall not be disqualified under this paragraph merely because a person (including the employer) other than the trustee or custodian so holding plan assets may be granted, under the trust instrument, the power to control the investment of the trust funds either by directing investments (including reinvestments, disposals, and exchanges) or by disapproving proposed investments (including reinvestments, disposals, or exchanges)."

(2) The second sentence of section 401(d)(1)

is amended by striking out "the date of the enactment of this subsection" and inserting in lieu thereof "October 10, 1962,".

(d) Certain Custodial Accounts.—Effective as of January 1, 1974, subsection (f) of section 401 (relating to certain custodial accounts) is amended to read as follows:

"(f) Certain Custodial Accounts and Annuity Contracts.—For purposes of this title, a custodial account or an annuity contract shall be treated as a qualified trust under this section if—

"(1) the custodial account or annuity contract would, except for the fact that it is not a trust, constitute a qualified trust under this section, and

"(2) the assets thereof are held by a bank (as defined in subsection (d)(1)) or another person who demonstrates, to the satisfaction of the Secretary or his delegate, that the manner in which he will hold the assets will be consistent with the requirements of this section.

For purposes of this title, in the case of a custodial account or annuity contract treated as a qualified trust under this section by reason of this subsection, the person holding the assets of such account or holding such contract shall be treated as the trustee thereof."

(e) Custodial Accounts for Regulated Invest-

MENT COMPANY STOCK.—Effective as of January 1, 1974, section 403 (b) (relating to taxability of beneficiary under annuity purchased by section 501 (c) (3) organization or public school) is amended by adding at the end thereof the following new paragraph:

"(7) CUSTODIAL ACCOUNTS FOR REGULATED INVESTMENT COMPANY STOCK.—

"(A) AMOUNTS PAID TREATED AS CONTRIBUTIONS.—For purposes of this title, amounts paid by an employer described in paragraph (1) (A) to a custodial account which satisfies the requirements of section 401 (f) (2) shall be treated as amounts contributed by him for an annuity contract for his employee if the amounts are paid to provide a retirement benefit for that employee and are to be invested in regulated investment company stock to be held in that custodial account.

"(B) ACCOUNT TREATED AS PLAN.—For purposes of this title, a custodial account which satisfies the requirements of section 401 (f) (2) shall be treated as an organization described in section 401 (a) solely for purposes of subchapter F and subtitle F with respect to amounts received by it (and income from investment thereof) which are excluded under this subsection from the gross income

of the employees on whose behalf such amounts are paid.

"(C) REGULATED INVESTMENT COMPANY.—For purposes of this paragraph, the term 'regulated investment company' means a domestic corporation which is a regulated investment company within the meaning of section 851 (a), and which issues only redeemable stock."

(f) INSURED CREDIT UNIONS.—Effective as of January 1, 1974, the last sentence of section 401 (d) (1) is amended by striking out "section 581," and inserting in lieu thereof "section 581, an insured credit union (within the meaning of section 101 (6) of the Federal Credit Union Act),".

(g) PUBLIC INSPECTION OF CERTAIN INFORMATION WITH RESPECT TO PENSION, PROFIT-SHARING, AND STOCK BONUS PLANS.—

(1) AMENDMENT OF SECTION 6104 (a).—Paragraph (1) of section 6104 (a) (relating to public inspection of applications for tax exemption) is amended—

(A) by redesignating subparagraph (B) as subparagraph (D) and by inserting after subparagraph (A) the following new subparagraphs:

"(B) PENSION, ETC., PLANS.—The following shall be open to public inspection at such times

and in such places as the Secretary or his delegate may prescribe:

"(i) any application filed with respect to the qualification of a pension, profit-sharing, or stock bonus plan under section 401(a), 403(a), or 405(a), under an individual retirement account described in section 408(a), or under an individual retirement annuity described in section 408(b),

"(ii) any application filed with respect to the exemption from tax under section 501(a) of an organization forming part of a plan or account referred to in clause (i),

"(iii) any papers submitted in support of an application referred to in clause (i) or (ii), and

"(iv) any letter or other document issued by the Internal Revenue Service and dealing with the qualification referred to in clause (i) or the exemption from tax referred to in clause (ii).

"(C) CERTAIN NAMES AND COMPENSATION NOT TO BE OPENED TO PUBLIC INSPECTION.—In the case of any application, document, or other papers, referred to in subparagraph (B), informa-

tion from which the compensation (including deferred compensation) of any participant may be ascertained shall not be opened to public inspection under subparagraph (B)."

(B) The heading of subparagraph (A) of section 6104(a)(1) is amended to read as follows:

"(A) ORGANIZATIONS DESCRIBED IN SECTION 501.—".

(C) The heading of subparagraph (D) of section 6104(a)(1) (as redesignated by subparagraph (A) of this paragraph) is amended to read as follows:

"(D) WITHHOLDING OF CERTAIN OTHER INFORMATION.—".

(D) Subparagraph (D) of section 6104(a)(1) (as so redesignated) is amended by striking out "subparagraph (A)" each place it appears and inserting in lieu thereof "subparagraph (A) or (B)".

(2) AMENDMENT OF SECTION 6104(a)(2).—Subparagraph (A) of section 6104(a)(2) is amended by adding at the end thereof "any application referred to in subparagraph (B) of subsection (a)(1) of this section, and".

(3) AMENDMENT OF SECTION 6104(b).—Section

6104(b) (relating to inspection of annual information returns) is amended by striking out "and 6056" and inserting in lieu thereof "6056, and 6058".

(4) EFFECTIVE DATE.—The amendments made by this subsection shall apply to applications filed (or documents issued) after December 31, 1975.

(h) CERTAIN PUERTO RICAN PENSION, ETC., PLANS TO BE EXEMPT FROM TAX UNDER SECTION 501(a).—Effective for taxable years beginning after December 31, 1973, for purposes of section 501(a) of the Internal Revenue Code of 1954 (relating to exemption from tax), any trust forming part of a pension, profit-sharing, or stock bonus plan all of the participants of which are residents of the Commonwealth of Puerto Rico shall be treated as an organization described in section 401(a) of such Code if such trust—

(1) forms a part of a pension, profit-sharing, or stock bonus plan, and

(2) is exempt from income tax under the laws of the Commonwealth of Puerto Rico.

(i) YEAR OF DEDUCTION FOR CERTAIN EMPLOYER CONTRIBUTIONS FOR SEVERANCE PAYMENTS REQUIRED BY FOREIGN LAW.—Effective for taxable years beginning after December 31, 1973, if—

(1) an employer is engaged in a trade or business in a foreign country,

(2) such employer is required by the laws of that country to make payments, based on periods of service, to its employees or their beneficiaries after the employees' retirement, death, or other separation from the service, and

(3) such employer establishes a trust (whether organized within or outside the United States) for the purpose of funding the payments required by such law,

then, in determining for purposes of paragraph (5) of section 404 (a) of the Internal Revenue Code of 1954 the taxable year in which any contribution to or under the plan is includible in the gross income of the nonresident alien employees of such employer, such paragraph (5) shall be treated as not requiring that separate accounts be maintained for such nonresident alien employees.

SEC. 1023. STUDY OF GOVERNMENTAL PLANS.

(a) STUDY.—The Committee on Ways and Means and the Committee on Education and Labor of the House of Representatives shall study retirement plans established and maintained or financed (directly or indirectly) by the Government of the United States, by any State (including the District of Columbia) or political subdivision thereof, or by

any agency or instrumentality of any of the foregoing. Such study shall include an analysis of—

(1) the adequacy of existing levels of participation, vesting, and financing arrangements,

(2) existing fiduciary standards,

(3) the unique circumstances affecting mobility of government employees and individuals employed under Federal procurement, construction, or research contracts or grants, and

(4) the necessity for Federal legislation and standards with respect to such plans.

In determining whether any such plan is adequately financed, each committee shall consider the necessity for minimum funding standards, as well as the taxing power of the government maintaining the plan.

(b) Reports and Recommendations.—Not later than December 31, 1976, the Committee on Ways and Means and the Committee on Education and Labor shall each submit to the House of Representatives the results of the studies conducted under subsection (a), together with such recommendations as may be appropriate.

SEC. 1024. PROTECTION FOR EMPLOYEES UNDER FEDERAL PROCUREMENT, CONSTRUCTION, OR RESEARCH CONTRACTS OR GRANTS.

(a) Secretary of Labor To Conduct Study.—

The Secretary of Labor shall, during the 2-year period beginning on the date of the enactment of this Act, conduct a full and complete study and investigation of the steps necessary to be taken to insure that professional, scientific, and technical personnel and others working in associated occupations employed under Federal procurement, construction, or research contracts or grants will, to the extent feasible, be protected against forfeitures of pension or retirement rights or benefits, otherwise provided. as a consequence of job transfers or loss of employment resulting from terminations or modifications of Federal contracts, grants, or procurement policies. The Secretary of Labor shall report the results of its study and investigation to the Congress within 2 years after the date of the enactment of this Act.

(b) CONSULTATION.—In the course of conducting the study and investigation described in subsection (a), and in developing the regulations referred to in subsection (c), the Secretary of Labor shall consult—

(1) with appropriate professional societies, business organizations, and labor organizations, and

(2) with the heads of interested Federal departments and agencies.

(c) DEVELOPMENT OF REGULATIONS.—Within 1 year after the date on which he submits his report to the Con-

gress under subsection (a), the Secretary of Labor shall, if he determines it to be feasible, develop regulations which will provide the protection of pension and retirement rights and benefits referred to in subsection (a).

(d) EITHER HOUSE MAY DISAPPROVE REGULATIONS.—

(1) IN GENERAL.—Any regulations developed pursuant to subsection (c) shall take effect if, and only if—

(A) the Secretary of Labor, not later than the day which is 3 years after the date of the enactment of this Act, delivers a copy of such regulations to the House of Representatives and a copy to the Senate, and

(B) before the close of the 90-day period which begins on the day on which the copies of such regulations are delivered to the House of Representatives and to the Senate, neither the House of Representatives nor the Senate adopts, by an affirmative vote of a majority of those present and voting in that House, a resolution of disapproval.

(2) RESOLUTION OF DISAPPROVAL.—For purposes of this subsection, the term "resolution of disapproval" means only a resolution of either House of Congress, the matter after the resolving clause of which

is as follows: "That the   does not favor the taking effect of the regulations transmitted to the Congress by the Secretary of Labor on   ", the first blank space therein being filled with the name of the resolving House and the second blank space therein being filled with the day and year.

(3) REFERENCE OF RESOLUTION TO COMMITTEE.—A resolution of disapproval in the House of Representatives shall be referred to the Committee on Education and Labor. A resolution of disapproval in the Senate shall be referred to the Committee on Labor and Public Welfare.

(4) DISCHARGE OF COMMITTEE CONSIDERING RESOLUTION.—

(A) If the Committee to which a resolution of disapproval has been referred has not reported it at the end of 7 calendar days after its introduction, it is in order to move either to discharge the committee from further consideration of the resolution or to discharge the committee from further consideration of any other resolution of disapproval which has been referred to the committee.

(B) A motion to discharge may be made only by an individual favoring the resolution, is highly privileged (except that it may not be made after

the committee has reported a resolution of disapproval), and debate thereon shall be limited to not more than 1 hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(C) If the motion to discharge is agreed to or disagreed to, the motion may not be renewed, nor may another motion to discharge the committee be made with respect to any other resolution of disapproval.

(5) PROCEDURE AFTER REPORT OR DISCHARGE OF COMMITTEE; DEBATE.—

(A) When the committee has reported, or has been discharged from further consideration of, a resolution of disapproval, it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion is highly privileged and is not debatable. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(B) Debate on the resolution of disapproval

shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the resolution. A motion further to limit debate is not debatable. An amendment to, or motion to recommit, the resolution is not in order, and it is not in order to move to reconsider the vote by which the resolution is agreed to or disagreed to.

(6) DECISIONS WITHOUT DEBATE ON MOTION TO POSTPONE OR PROCEED.—

(A) Motions to postpone, made with respect to the discharge from committee or the consideration of a resolution of disapproval, and motions to proceed to the consideration of other business, shall be decided without debate.

(B) Appeals from the decisions of the Chair relating to the application of the rules of the House of Representatives or the Senate, as the case may be, to the procedure relating to any resolution of disapproval shall be decided without debate.

(7) COPIES TO BE PRESENTED ON SAME DAY.—Whenever the Secretary of Labor transmits copies of the regulations to the Congress, a copy of such regulations shall be delivered to each House of Congress on the same day and shall be delivered to the Clerk of the House of Representatives if the House is not in session

and to the Secretary of the Senate if the Senate is not in session.

(8) DETERMINATION OF 90-DAY PERIOD.—The 90-day period referred to in paragraph (1) shall be computed by excluding—

(A) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain or an adjournment of the Congress sine die, and

(B) any Saturday and Sunday, not excluded under subparagraph (A), when either House is not in session.

(9) RULES OF HOUSE OF REPRESENTATIVES AND SENATE ON RESOLUTIONS OF DISAPPROVAL.—This subsection is enacted by the Congress—

(A) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and as such they are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of resolutions of disapproval described in paragraph (2); and they supersede other rules only to the extent that they are inconsistent therewith; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.

SEC. 1025. RETROACTIVE CHANGES IN PLAN.

Section 401 (b) (relating to certain retroactive changes in plan) is amended to read as follows:

"(b) CERTAIN RETROACTIVE CHANGES IN PLAN.—A stock bonus, pension, profit-sharing, or annuity plan shall be considered as satisfying the requirements of subsection (a) for the period beginning with the date on which it was put into effect, or for the period beginning with the earlier of the date on which there was adopted or put into effect any amendment which caused the plan to fail to satisfy such requirements, and ending with the time prescribed by law for filing the return of the employer for his taxable year in which such plan or amendment was adopted (including extensions thereof) or such later time as the Secretary or his delegate may designate, if all provisions of the plan which are necessary to satisfy such requirements are in effect by the end of such period and have been made effective for all purposes for the whole of such period."

SEC. 1026. EFFECTIVE DATES.

The amendments made by section 1021 shall apply to

plan years to which part I applies. Except as otherwise provided in section 1022, the amendments made by section 1022 shall apply to plan years to which part I applies. Sections 1023 and 1024 and the amendment made by section 1025 shall take effect on the date of the enactment of this Act.

PART III—REGISTRATION AND INFORMATION

SEC. 1031. REGISTRATION AND INFORMATION.

(a) ANNUAL REGISTRATION AND INFORMATION RETURNS.—Part III of subchapter A of chapter 61 (relating to information returns) is amended by adding at the end thereof the following new subpart;

"Subpart E—Registration of and Information Concerning Pension, Etc., Plans

"Sec. 6057. Annual registration, etc.
"Sec. 6058. Information required in connection with certain plans of deferred compensation.
"Sec. 6059. Periodic report by actuary.

"SEC. 6057. ANNUAL REGISTRATION, ETC.

"(a) ANNUAL REGISTRATION.—

"(1) GENERAL RULE.—Within such period after the end of a plan year as the Secretary or his delegate may by regulations prescribe, the plan administrator (within the meaning of section 414 (g)) of each funded plan to which part I of subchapter D of chapter 1 applied for such plan year shall file a registration statement with the Secretary or his delegate.

"(2) CONTENTS.—The registration statement required by paragraph (1) shall set forth—

"(A) the name of the plan,

"(B) the name and address of the plan administrator,

"(C) the name and taxpayer identifying number of each participant in the plan—

"(i) who, during such plan year, separated from the service covered by the plan,

"(ii) who is entitled to a deferred vested benefit under the plan as of the end of such plan year, and

"(iii) with respect to whom retirement benefits were not paid under the plan during such plan year,

"(D) the nature, amount, and form of the deferred vested benefit to which such participant is entitled, and

"(E) such other information as the Secretary or his delegate may require.

At the time he files the registration statement under this subsection, the plan administrator shall furnish evidence satisfactory to the Secretary or his delegate that he has complied with the requirement contained in subsection (e).

"(b) NOTIFICATION OF CHANGE IN STATUS.—Any plan administrator required to register under subsection (a) shall also notify the Secretary or his delegate, at such time as may be prescribed by regulations, of—

"(1) any change in the name of the plan,

"(2) any change in the name or address of the plan administrator,

"(3) the termination of the plan, or

"(4) the merger or consolidation of the plan with any other plan or its division into two or more plans.

"(c) VOLUNTARY REPORTS. To the extent provided in regulations prescribed by the Secretary or his delegate, the Secretary or his delegate may receive from—

"(1) any plan to which subsection (a) applies, and

"(2) any other plan (including any governmental plan or church plan (within the meaning of section 414)),

such information (including information relating to plan years beginning before January 1, 1974) as the plan administrator may wish to file with respect to the deferred vested benefit rights of any participant separated from the service covered by the plan during any plan year.

"(d) TRANSMISSION OF INFORMATION TO SECRETARY OF HEALTH, EDUCATION, AND WELFARE.—The Secretary or his delegate shall transmit copies of any statements, noti-

fications, reports, or other information obtained by him under this section to the Secretary of Health, Education, and Welfare.

"(e) INDIVIDUAL STATEMENT TO PARTICIPANT.—Each plan administrator required to file a registration statement under subsection (a) shall, before the expiration of the time prescribed for the filing of such registration statement, also furnish to each participant described in subsection (a) (2) (C) an individual statement setting forth the information with respect to such participant required to be contained in such registration statement.

"(f) REGULATIONS.—

"(1) IN GENERAL.—The Secretary, after consultation with the Secretary of Health, Education, and Welfare, may prescribe such regulations as may be necessary to carry out the provisions of this section. Regulations prescribed for purposes of this section shall be effective with respect to plan years beginning after December 31, 1975, only if approved by the Secretary of Labor.

"(2) MULTIEMPLOYER PLANS.—This section shall apply to any multiemployer plan only to the extent provided in regulations prescribed under this subsection. For purposes of this paragraph, the term 'multiemployer plan' means a plan to which more than one employer is required to contribute.

"(g) CROSS REFERENCE.—

"For provisions relating to penalties for failure to register or furnish statements required by this section, see section 6652(e) and section 6690.

"SEC. 6058. INFORMATION REQUIRED IN CONNECTION WITH CERTAIN PLANS OF DEFERRED COMPENSATION.

"(a) IN GENERAL.—Every employer who maintains a pension, annuity, stock bonus, profit-sharing, or other funded plan of deferred compensation described in part I of subchapter D of chapter 1, or the plan administrator (within the meaning of section 414 (g)) of the plan, shall file an annual return stating such information as the Secretary or his delegate may by or regulations prescribe with respect to the qualification, financial condition, and operations of the plan; except that, in the discretion of the Secretary or his delegate, the employer may be relieved from stating in its return any information which is reported in other returns.

"(b) EMPLOYER.—For purposes of this section, the term 'employer' includes a person described in section 401 (c) (4) and an individual who establishes an individual retirement account or annuity described in section 408.

"(c) CROSS REFERENCE.—

"For provisions relating to penalties for failure to file a return required by this section, see section 6652(f)."

(b) SANCTIONS.—

(1) FAILURE TO FILE REGISTRATION STATEMENTS OR NOTIFICATION OF CHANGE IN STATUS.—

(A) Section 6652 (relating to failure to file certain information returns) is amended by redesignating subsection (e) as subsection (g) and by inserting after subsection (d) the following new subsections:

"(e) ANNUAL REGISTRATION AND OTHER NOTIFICATION BY PENSION PLAN.—

"(1) REGISTRATION.—In the case of any failure to file a registration statement required under section 6057 (a) (relating to annual registration of certain plans) which includes all participants required to be included in such statement, on the date prescribed therefor (determined without regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause, there shall be paid (on notice and demand by the Secretary or his delegate and in the same manner as tax) by the person failing so to file, an amount equal to $1 for each participant with respect to whom there is a failure to file, multiplied by the number of days during which such failure continues, but the total amount imposed under this paragraph on any person for any failure to file with respect to any plan year shall not exceed $5,000.

"(2) NOTIFICATION OF CHANGE OF STATUS.—In the case of failure to file a notification required under section 6057(b) (relating to notification of change of status) on the date prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause, there shall be paid (on notice and demand by the Secretary or his delegate and in the same manner as tax) by the person failing so to file, $1 for each day during which such failure continues, but the total amounts imposed under this paragraph on any person for failure to file any notification shall not exceed $1,000.

"(f) INFORMATION REQUIRED IN CONNECTION WITH CERTAIN PLANS OF DEFERRED COMPENSATION.—In the case of failure to file a return required under section 6058 (relating to information required in connection with certain plans of deferred compensation) or 6047 (relating to information relating to certain trusts and annuity and bond purchase plans) on the date and in the manner prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause, there shall be paid (on notice and demand by the Secretary or his delegate and in the same manner as tax) by the person failing so to file, $10 for each day during which such failure continues, but the total amount

imposed under this subsection on any person for failure to file any return shall not exceed $5,000."

(B) (i) The section heading for section 6652 is amended by adding ", REGISTRATION STATEMENTS, ETC." before the period at the end thereof.

(ii) The item relating to section 6652 in the table of contents for subchapter A of chapter 68 is amended by adding ", registration statements, etc." before the period at the end thereof.

(2) FAILURE TO FURNISH STATEMENT TO PARTICIPANT.—

(A) Subchapter B of chapter 68 (relating to assessable penalties) is amended by adding at the end thereof the following new section:

"SEC. 6691. FRAUDULENT STATEMENT OR FAILURE TO FURNISH STATEMENT TO PLAN PARTICIPANT.

"Any person required under section 6057(e) to furnish a statement to a participant who willfully furnishes a false or fraudulent statement, or who willfully fails to furnish a statement in the manner, at the time, and showing the information required under section 6057(e), or regulations prescribed thereunder, shall for each such act, or for each such failure, be subject to a penalty under this subchapter of $50, which shall be assessed and collected in the same

manner as the tax on employers imposed by section 3111."

(B) The table of sections for such subchapter B is amended by adding at the end thereof the following new item:

"Sec. 6691. Fraudulent statement or failure to furnish statement to plan participant."

(c) CLERICAL AMENDMENTS.—

(1) The table of subparts for such part III is amended by adding at the end thereof the following:

"Subpart E. Registration of and information concerning pension, etc., plans."

(2) Section 6033 (c) (relating to cross references) is amended by adding at the end thereof the following:

"For provisions relating to information required in connection with certain plans of deferred compensation, see section 6058."

(3) Subsection (d) of section 6047 (relating to information with respect to certain trusts and annuity and bond purchase plans) is amended to read as follows:

"(d) CROSS REFERENCES.—

"(1) For provisions relating to penalties for failure to file a return required by this section, see section 6652(f).

"(2) For criminal penalty for furnishing fraudulent information, see section 7207."

SEC. 1032. DUTIES OF SECRETARY OF HEALTH, EDUCATION, AND WELFARE.

Title XI of the Social Security Act (relating to general provisions) is amended by adding at the end of part A thereof the following new section:

"NOTIFICATION OF SOCIAL SECURITY CLAIMANT WITH RESPECT TO DEFERRED VESTED BENEFITS

"SEC. 1131. (a) Whenever—

"(1) the Secretary makes a finding of fact and a decision as to—

"(A) the entitlement of any individual to monthly benefits under section 202, 223, or 228,

"(B) the entitlement of any individual to a lump-sum death payment payable under section 202 (i) on account of the death of any person to whom such individual is related by blood, marriage, or adoption, or

"(C) the entitlement under section 226 of any individual to hospital insurance benefits under part A of title XVIII, or

"(2) the Secretary is requested to do so—

"(A) by any individual with respect to whom the Secretary holds information obtained under section 6057 of the Internal Revenue Code of 1954, or

"(B) in the case of the death of the individual referred to in subparagraph (A), by the individual who would be entitled to payment under section 204 (d) of this Act,

he shall transmit to the individual referred to in paragraph (1) or the individual making the request under paragraph

(2) any information, as reported by the employer, regarding any deferred vested benefit transmitted to the Secretary pursuant to such section 6057 (or under section 106 of the Employee Benefit Security Act of 1974) with respect to the individual referred to in paragraph (1) or (2) (A) or the person on whose wages and self-employment income entitlement (or claim of entitlement) is based.

"(b) (1) For purposes of section 201 (g) (1), expenses incurred in the administration of subsection (a) shall be deemed to be expenses incurred for the administration of title II.

"(2) There are hereby authorized to be appropriated to the Federal Old-Age and Survivors Insurance Trust Fund for each fiscal year (commencing with the fiscal year ending June 30, 1974) such sums as the Secretary deems necessary on account of additional administrative expenses resulting from the enactment of the provisions of subsection (a)."

SEC. 1033. ENROLLMENT OF AND REPORTS BY ACTUARIES.

(a) REPORTS BY ACTUARIES.—Subpart E of part III of subchapter A of chapter 61 (relating to registration of and information concerning pension, etc., plans) is amended by adding at the end thereof the following new section:

"SEC. 6059. PERIODIC REPORT OF ACTUARY.

"(a) GENERAL RULE.—The actuarial report described in subsection (b) shall be filed by the plan administrator

(as defined in section 414 (g)) of each defined benefit plan to which section 412 applies, for the first plan year for which section 412 applies to the plan and for each third plan year thereafter (or more frequently if the Secretary or his delegate determines that more frequent reports are necessary).

"(b) ACTUARIAL REPORT.—The actuarial report of a plan required by subsection (a) shall be prepared and signed by an enrolled actuary (within the meaning of section 7517) and shall contain—

"(1) a description of the plan,

"(2) a description of the funding method and actuarial assumptions used to determine costs under the plan,

"(3) a certification as to whether the funding standard account required under section 412 (b) (1) has been maintained during the period to which the report relates,

"(4) such other information regarding the plan as the Secretary or his delegate may by regulations require, and

"(5) a statement—

"(A) that to the best of his knowledge the report is complete and accurate, and

"(B) of his opinion regarding the reasonableness of the funding method and actuarial assump-

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tions used to determine the normal costs under the plan.

"(c) TIME AND MANNER OF FILING.—The actuarial report and statement required by this section shall be filed at the time and in the manner provided by regulations prescribed by the Secretary or his delegate."

(b) ASSESSABLE PENALTIES.—Subchapter B of chapter 68 (relating to assessable penalties) is amended by adding at the end thereof the following new section:

"SEC. 6692. FAILURE TO FILE ACTUARIAL REPORT.

"The plan administrator (as defined in section 414 (g)) of each defined benefit plan to which section 412 applies who fails to file the report required by section 6059 at the time and in the manner required by section 6059, shall pay a penalty of $1,000 for each such failure unless it is shown that such failure is due to reasonable cause."

(c) ENROLLMENT OF ACTUARIES.—Chapter 77 (relating to miscellaneous provisions) is amended by inserting at the end thereof the following new section:

"SEC. 7517. ENROLLMENT OF ACTUARIES.

"The Secretary or his delegate shall, by regulations, establish reasonable standards and qualifications for persons performing actuarial services described in section 401 (a) (12) or 6059 and, upon application by any individual, shall enroll such individual if the Secretary or his delegate

finds that such individual satisfies such standards and qualifications. With respect to individuals applying for enrollment before January 1, 1976, such standards and qualifications shall include a requirement for an appropriate period of responsible actuarial experience or of responsible experience in the administration of pension plans. With respect to individuals applying for enrollment on or after January 1, 1976, such standards and qualifications shall include—

"(1) education and training in actuarial mathematics and methodology, as evidenced by—

"(A) a degree in actuarial mathematics or its equivalent from an accredited college or university, or

"(B) successful completion of an examination in actuarial mathematics and methodology to be given by the Secretary or his delegate, or

"(C) successful completion of other actuarial examinations deemed adequate by the Secretary or his delegate, and

"(2) an appropriate period of responsible actuarial experience.

The Secretary or his delegate may, after notice and an opportunity for a hearing, suspend or terminate the enrollment of an individual under this section if the Secretary or his delegate finds that such individual does not satisfy

the requirements for enrollment which were in effect at the time of his application. For purposes of this title, the term 'enrolled actuary' means a person who is enrolled by the Secretary or his delegate pursuant to this section. Regulations prescribed for purposes of this section shall be effective after December 31, 1975, only if approved by the Secretary of Labor."

SEC. 1034. EFFECTIVE DATES.

This part shall take effect upon the date of the enactment of this Act; except that—

(1) the requirements of section 6059 of the Internal Revenue Code of 1954 shall apply only with respect to plan years to which part I of this title applies,

(2) the requirements of section 6057 of such Code shall apply only with respect to plan years beginning after December 31, 1975, and

(3) the requirements of section 6058 of such Code shall apply only with respect to plan years beginning after the date of the enactment of this Act.

PART IV—DECLARATORY JUDGMENTS RELATING TO QUALIFICATION OF CERTAIN RETIREMENT PLANS

SEC. 1041. TAX COURT PROCEDURE.

(a) In General.—Subchapter C of chapter 76 (re-

lating to the Tax Court) is amended by adding at the end thereof the following new part:

"PART IV—DECLARATORY JUDGMENTS RELATING TO QUALIFICATION OF CERTAIN RETIREMENT PLANS

"Sec. 7476. Declaratory judgments.

"SEC. 7476. DECLARATORY JUDGMENTS.

"(a) CREATION OF REMEDY.—In a case of actual controversy involving a determination by the Secretary or his delegate with respect to the initial qualification or continuing qualification under subchapter D of chapter 1 of a retirement plan, or involving a failure to make a determination with respect to such an issue, upon the filing of an appropriate pleading, the United States Tax Court may make a declaration with respect to such initial qualification or continuing qualification. Any such declaration shall have the force and effect of a decision of the Tax Court and shall be reviewable as such.

"(b) LIMITATIONS.—

"(1) PETITIONER.—A pleading may be filed under this section only by a petitioner who is the employer, the plan administrator, or an employee who has qualified under regulations prescribed by the Secretary or his delegate as an interested party for purposes of

pursuing administrative remedies within the Internal Revenue Service.

"(2) NOTICE.—For purposes of this section, the filing of a pleading by any petitioner may be held by the Tax Court to be premature, unless the petitioner establishes to the satisfaction of the court that he has complied with the requirements prescribed by regulations of the Secretary or his delegate with respect to notice to other interested parties that the proceeding is being initiated.

"(3) EXHAUSTION OF ADMINISTRATIVE REMEDIES.—The Tax Court shall not issue a declaratory judgment or decree under this section in any proceeding unless it determines that the petitioner has exhausted administrative remedies available to him within the Internal Revenue Service. A petitioner shall not be deemed to have exhausted his administrative remedies with respect to a failure by the Internal Revenue Service to make a determination with respect to initial qualification or continuing qualification of a retirement plan before the expiration of 270 days after the request for such determination was made.

(4) PLAN PUT INTO EFFECT.—No proceeding may be maintained under this section unless the plan (and,

in the case of a controversy involving the continuing qualification of the plan because of an amendment to the plan, the amendment) with respect to which a decision of the Tax Court is sought has been put into effect before the filing of the pleading. A plan or amendment shall be treated as in effect even though under the plan the funds contributed to the plan may be refunded if the plan (or the plan as so amended) is found to be not qualified.

"(5) TIME FOR BRINGING ACTION.—If the Secretary or his delegate sends by certified or registered mail his determination with respect to the qualification of the plan to the person requesting such determination, no proceeding may be initiated under this section by any person unless the pleading is filed before the 91st day after the date such person is notified by the Internal Revenue Service of such mailing.

"(c) COMMISSIONERS.—The chief judge of the Tax Court may assign proceedings under this section to be heard by the commissioners of the court, and the court may authorize a commissioner to enter the decision of the court with respect to such proceeding, subject to such conditions and review as the court may by rule provide.

"(d) RETIREMENT PLAN.—For purposes of this section, the term 'retirement plan' means—

"(1) a pension, profit-sharing, or stock bonus plan

described in section 401 (a) or a trust which is part of such a plan,

"(2) an annuity plan described in section 403 (a), or

"(3) a bond purchase plan described in section 405 (a)."

(b) TECHNICAL AMENDMENTS.—

(1) FEE FOR FILING PETITION.—Section 7451 relating to fee for filing petition) is amended by striking out "deficiency" and inserting in lieu thereof "deficiency or for a declaratory judgment under part IV of this subchapter".

(2) DATE OF DECISION.—Section 7459 (c) (relating to date of decision) is amended by inserting before the period at the end of the first sentence the following: "or, in the case of a declaratory judgment proceeding under part IV of subchapter C, the date of the court's order entering the decision".

(3) VENUE FOR APPEAL OF DECISION.—Section 7482 (b) (1) (relating to venue) is amended by adding at the end thereof the following new sentence: "In the case of a declaratory decision of the Tax Court, the rules of this paragraph shall be applied with respect to the employer who maintains the plan."

(c) CLERICAL AMENDMENT.—The table of parts for

subchapter C of chapter 76 is amended by adding at the end thereof the following new item:

"Part IV. Declaratory judgments relating to qualification of certain retirement plans.".

(d) Effective Date.—The amendments made by this section shall take effect on January 1, 1978.

PART V—INTERNAL REVENUE SERVICE

SEC. 1051. ESTABLISHMENT OF OFFICE.

(a) In General.—Section 7802 (relating to Commissioner of Internal Revenue) is amended to read as follows:

"SEC. 7802. COMMISSIONER OF INTERNAL REVENUE; ASSISTANT COMMISSIONER (EMPLOYEE PLANS AND EXEMPT ORGANIZATIONS).

"(a) Commissioner of Internal Revenue.—There shall be in the Department of the Treasury a Commissioner of Internal Revenue, who shall be appointed by the President, by and with the advice and consent of the Senate. The Commissioner of Internal Revenue shall have such duties and powers as may be prescribed by the Secretary.

"(b) Assistant Commissioner for Employee Plans and Exempt Organizations.—There is established within the Internal Revenue Service an office to be known as the 'Office of Employee Plans and Exempt Organizations' to be under the supervision and direction of an Assistant Commissioner of Internal Revenue. As head

of the Office, the Assistant Commissioner shall be responsible for carrying out such functions as the Secretary or his delegate may prescribe with respect to organizations exempt from tax under section 501 (a) and with respect to plans to which part I of subchapter D of chapter 1 applies (and with respect to organizations designed to be exempt under such section and plans designed to be plans to which such part applies)."

(b) Clerical Amendment.—The item relating to section 7802 in the table of sections for subchapter A of chapter 80 is amended to read as follows:

"Sec. 7802. Commissioner of Internal Revenue; Assistant Commissioner (Employee Plans and Exempt Organizations)."

(c) Effective Date.—The amendments made by this section shall take effect on the 90th day after the date of the enactment of this Act.

SEC. 1052. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to the Department of the Treasury for the purpose of carrying out all functions of the Office of Employee Plans and Exempt Organizations—

(1) for the fiscal year ending June 30, 1974, $20,000,000, and

(2) for each fiscal year thereafter, $70,000,000.

Subtitle B—Other Amendments to the Internal Revenue Code Relating to Retirement Plans

SEC. 2001. CONTRIBUTIONS ON BEHALF OF SELF-EMPLOYED INDIVIDUALS AND SHAREHOLDER-EMPLOYEES.

(a) INCREASE IN MAXIMUM AMOUNT DEDUCTIBLE FOR SELF-EMPLOYED INDIVIDUALS.—

(1) Paragraph (1) of section 404(e) (relating to special limitations for self-employed individuals) is amended—

(A) by striking out "$2,500, or 10 percent" and inserting in lieu thereof "$7,500, or 15 percent", and

(B) by striking out "subject to the provisions of paragraph (2)" and inserting in lieu thereof "subject to paragraphs (2) and (4)".

(2) Paragraph (2)(A) of section 404(e) is amended by striking out "shall not exceed $2,500, or 10 percent" and inserting in lieu thereof "shall (subject to paragraph (4)) not exceed $7,500, or 15 percent".

(3) Section 404(e) is amended by adding at the end thereof the following new paragraph:

"(4) LIMITATIONS CANNOT BE LOWER THAN $750 OR 100 PERCENT OF EARNED INCOME.—The limi-

tations under paragraphs (1) and (2)(A) for any employee shall not be less than the lesser of—

"(A) $750, or

"(B) 100 percent of the earned income derived by such employee from the trades or businesses taken into account for purposes of paragraph (1) or (2)(A), as the case may be."

(b) INCREASE IN MAXIMUM AMOUNT DEDUCTIBLE FOR SHAREHOLDER-EMPLOYEES.—Paragraph (1) of section 1379(b) (relating to taxability of shareholder-employees) is amended—

(1) by striking out "10 percent" in subparagraph (A) and inserting in lieu thereof "15 percent", and

(2) by striking out "$2,500" in subparagraph (B) and inserting in lieu thereof "$7,500".

(c) ONLY FIRST $100,000 OF ANNUAL COMPENSATION TO BE TAKEN INTO ACCOUNT.—Subsection (a) of section 401 (relating to requirements for qualification) is amended by inserting after paragraph (16) the following new paragraph:

"(17) In the case of a plan which provides contributions or benefits for employees some or all of whom are employees within the meaning of subsection (c)(1), or are shareholder-employees within the meaning of section 1379(d), only if the basic or regular rate of annual

compensation of each employee taken into account under the plan does not exceed the first $100,000 of such compensation."

(d) DEFINED BENEFIT PLANS FOR SELF-EMPLOYED.—

(1) Subsection (a) of section 401 is amended by inserting after paragraph (17) the following new paragraph:

"(18) In the case of a trust which is part of a plan providing a defined benefit for employees some or all of whom are employees within the meaning of subsection (c) (1), or are shareholder-employees within the meaning of section 1379 (d), only if such plan satisfies the requirements of subsection (j)."

(2) Section 401 (relating to qualified pension, profit-sharing, and stock bonus plans) is amended by redesignating subsection (j) as subsection (k) and by inserting after subsection (i) the following new subsection:

"(j) DEFINED BENEFIT PLANS PROVIDING BENEFITS FOR SELF-EMPLOYED INDIVIDUALS AND SHAREHOLDER-EMPLOYEES.—

"(1) IN GENERAL.—A defined benefit plan satisfies the requirements of this subsection only if the plan provides that the basic benefit accruing for each plan year of participation by an employee within the mean-

ing of subsection (c)(1) (or a shareholder-employee) does not exceed the limitation on such accrual set forth in regulations prescribed by the Secretary or his delegate under this subsection to ensure that there will be reasonable comparability (assuming level funding) between the maximum retirement benefits which may be provided with favorable tax treatment under this title for such employees under—

"(A) defined contribution plans,

"(B) defined benefit plans, and

"(C) a combination of defined contribution plans and defined benefit plans.

"(2) GUIDELINE REGULATIONS.—The regulations prescribed under this subsection shall provide that a plan does not satisfy the requirements of this subsection if, under the plan, the basic benefit of any employee within the meaning of subsection (c)(1) (or a shareholder-employee) may exceed the sum of the products for each plan year of participation of—

"(A) his annual compensation (not in excess of $50,000) for such year, and

"(B) the applicable percentage determined under paragraph (3).

"(3) APPLICABLE PERCENTAGE.—

"(A) TABLE.—For purposes of paragraph

(2), the applicable percentage for any individual for any plan year shall be based on the percentage shown on the following table opposite his age when his current period of participation in the plan began:

"Age when participation began:	Applicable percentage
30 or less	6.5
35	5.4
40	4.4
45	3.6
50	3.0
55	2.5
60 or over	2.0

"(B) ADDITIONAL REQUIREMENTS.—The regulations prescribed under this subsection shall include provisions—

"(i) for applicable percentages for ages between any two ages shown on the table,

"(ii) for adjusting the applicable percentages in the case of plans providing benefits other than a basic benefit,

"(iii) that any increase in the rate of accrual, and any increase in the compensation base which may be taken into account, shall, with respect only to such increase, begin a new period of participation in the plan, and

"(iv) when appropriate, in the case of periods beginning after December 31, 1977, for adjustments in the applicable percentages based on changes in prevailing interest and mortality rates occurring after 1973.

"(4) CERTAIN CONTRIBUTIONS AND BENEFITS MAY NOT BE TAKEN INTO ACCOUNT.—A defined benefit plan which provides contributions or benefits for owner-employees shall not satisfy the requirements of this subsection unless such plan meets the requirements of subsection (a) (4) without taking into account contributions or benefits under chapter 2 (relating to tax on self-employment income), chapter 21 (relating to Federal Insurance Contributions Act), title II of the Social Security Act, or any other Federal or State law.

"(5) DEFINITIONS.—For purposes of this subsection—

"(A) BASIC BENEFIT.—The term 'basic benefit' means a benefit in the form of a straight life annuity commencing at the later of—

"(i) age 65, or

"(ii) the day 5 years after the day the participant's current period of participation began,

under a plan which provides no ancillary benefits and to which employees do not contribute.

"(B) SHAREHOLDER-EMPLOYEE.—The term 'shareholder-employee' has the same meaning as when used in section 1379 (d).

"(C) Compensation.—The term 'compensation' means—

"(i) in the case of an employee within the meaning of subsection (c)(1), the earned income of such individual, or

"(ii) in the case of a shareholder-employee, the compensation received or accrued by the individual from the electing small business corporation.

"(6) Special rules.—Section 404(e) (relating to special limitations for self-employed individuals) shall not apply to a trust to which this subsection applies."

(e) Repeal of Existing Tax Treatment of Excess Contributions.—

(1) The last sentence of section 401(d)(5) is amended to read as follows: "Subparagraphs (A) and (B) shall not apply to contributions described in subsection (e)."

(2) Paragraph (8) of section 401(d) is hereby repealed.

(3) Subsection (e) of section 401 is amended to read as follows:

"(e) Contributions for Premiums on Annuity, Etc., Contracts.—A contribution by the employer on behalf of an owner-employee is described in this subsection if—

"(1) under the plan such contribution is required to be applied (directly or through a trustee) to pay premiums or other consideration for one or more annuity, endowment, or life insurance contracts on the life of such owner-employee issued under the plan,

"(2) the amount of such contribution exceeds the amount deductible under section 404 with respect to contributions made by the employer on behalf of such owner-employee under the plan, and

"(3) the amount of such contribution does not exceed the average of the amounts which were deductible under section 404 with respect to contributions made by the employer on behalf of such owner-employee under the plan (or which would have been deductible if such section had been in effect) for the first three taxable years (A) preceding the year in which the last such annuity, endowment, or life insurance contract was issued under the plan, and (B) in which such owner-employee derived earned income from the trade or business with respect to which the plan is established, or for so many of such taxable years as such owner-employee was engaged in such trade or business and derived earned income therefrom.

In the case of any individual on whose behalf contributions described in paragraph (1) are made under more than one

plan as an owner-employee during any taxable year, the preceding sentence shall not apply if the amount of such contributions under all such plans for all such years exceeds \$7,500. Any contribution which is not considered to be an excess contribution by reason of the application of this subsection shall, for purposes of section 4972 (b), be taken into account as a contribution made by such owner-employee as an employee to the extent that the amount of such contribution is not deductible under section 404 for the taxable year."

(4) Clause (ii) of section 401 (a) (10) (A) is amended by striking out "subsection (e) (3) (A)" and inserting in lieu thereof "subsection (e)".

(5) Subparagraph (A) of section 72 (m) (5) is amended—

(A) by inserting "and" at the end of clause (i),

(B) by striking out the comma at the end of clause (ii) and inserting in lieu thereof a period, and

(C) by striking out clause (iii).

(f) Tax on Excess Contributions.—

(1) Chapter 43 (relating to qualified pension, etc., plans) is amended by inserting after section 4971 the following new section:

"SEC. 4972. TAX ON EXCESS CONTRIBUTIONS FOR SELF-EMPLOYED INDIVIDUALS.

"(a) TAX IMPOSED.—In the case of a plan which provides contributions or benefits for employees some or all of whom are employees within the meaning of section 401 (c) (1), there is hereby imposed, for each taxable year of the employer who maintains such plan, a tax in an amount equal to 6 percent of the amount of the excess contributions under the plan (determined as of the close of the taxable year). The tax imposed by this subsection shall be paid by the employer who maintains the plan.

"(b) EXCESS CONTRIBUTIONS.—

"(1) IN GENERAL.—For purposes of this section, the term 'excess contributions' means the sum of the amounts (if any) determined under paragraphs (2), (3), and (4). For purposes of this subsection, the amount of any contribution which is allocable (determined under regulations prescribed by the Secretary or his delegate) to the purchase of life, accident, health, or other insurance shall not be taken into account.

"(2) CONTRIBUTIONS BY OWNER-EMPLOYEES.—In the case of a plan which provides contributions or benefits for employees some or all of whom are owner-

employees (within the meaning of section 401 (c) (3)), the sum of—

"(A) the excess (if any) of—

"(i) the amount contributed under the plan by each owner-employee (as an employee) for the taxable year, over

"(ii) the amount permitted to be contributed by each owner-employee (as an employee) for such year, and

"(B) the amount determined under this paragraph for the preceding taxable year of the employer,

reduced by the excess (if any) of the amount described in subparagraph (A) (ii) over the amount described in subparagraph (A) (i).

"(3) DEFINED BENEFIT PLANS.—In the case of a defined benefit plan, any amount contributed under the plan by the employer during the taxable year or any prior taxable year beginning after December 31, 1975, if—

"(A) as of the close of the taxable year, the full funding limitation of the plan (determined under section 412 (c) (7)) is zero, and

"(B) such amount has not been deductible for the taxable year or any prior taxable year.

"(4) DEFINED CONTRIBUTION PLANS.—In the case of a plan other than a defined benefit plan, the portion of the amounts contributed under the plan by the employer during the taxable year and each prior taxable year beginning after December 31, 1975, which has not been deductible for the taxable year or any prior taxable year.

"(c) AMOUNT PERMITTED TO BE CONTRIBUTED BY OWNER-EMPLOYEE.—For purposes of subsection (b) (2), the amount permitted to be contributed under a plan by an owner-employee (as an employee) for any taxable year is the smallest of the following:

"(1) $2,500,

"(2) 10 percent of the earned income for such taxable year derived by such owner-employee from the trade or business with respect to which the plan is established, or

"(3) the amount of the contribution which would be contributed by the owner-employee (as an employee) if such contribution were made at the rate of contributions permitted to be made by employees other than owner-employees.

In any case in which there are no employees other than owner-employees, the amount determined under the preceding sentence shall be zero.

"(d) CROSS REFERENCE.—

"For disallowance of deduction for taxes paid under this section, see section 275."

(2) CLERICAL AMENDMENT.—The table of sections for chapter 43 is amended by inserting after the item relating to section 4971 the following new item:

"Sec. 4972. Tax on excess contributions for self-employed individuals.".

(g) PREMATURE DISTRIBUTIONS TO OWNER-EMPLOYEES.—

(1) IN GENERAL.—Subparagraph (B) of section 72(m)(5) (relating to penalties applicable to certain amounts received by owner-employees) is amended to read as follows:

"(B) If a person receives an amount to which this paragraph applies, his tax under this chapter for the taxable year in which such amount is received shall be increased by an amount equal to 10 percent of the portion of the amount so received which is includible in his gross income for such taxable year."

(2) CONFORMING AMENDMENTS.—

(A) Subparagraphs (C), (D), and (E) of section 72(m)(5) are hereby repealed.

(B) The second sentence of section 46(a)(3) and the second sentence of section 50A(a)(3) are

each amended by striking out "tax preferences)," and inserting in lieu thereof "tax preferences), section 72(m)(5)(B) (relating to 10 percent tax on premature distributions to owner-employees),".

(C) The third sentence of section 901(a) is amended by striking out "tax preferences)," and inserting in lieu thereof "tax preferences), against the tax imposed for the taxable year under section 72(m)(5)(B) (relating to 10 percent tax on premature distributions to owner-employees),".

(D) Subparagraph (A) of section 56(a)(2) and paragraph (1) of section 56(c) are each amended by striking out "402(e)" and inserting in lieu thereof "72(m)(5)(B), 402(e)".

(E) Section 404(a)(2) is amended by striking out "(16)" and inserting in lieu thereof "(16), (17), (18), and (19)".

(h) EFFECTIVE DATES.—

(1) The amendments made by subsections (a), (b), and (c) shall apply to taxable years beginning after December 31, 1973.

(2) The amendments made by subsections (d), (e), (f), and (g) shall apply to taxable years beginning after December 31, 1975.

SEC. 2002. DEDUCTION FOR RETIREMENT SAVINGS.

(a) ALLOWANCE OF DEDUCTION.—

(1) IN GENERAL.—Part VII of subchapter B of chapter 1 (relating to additional itemized deductions for individuals) is amended by redesignating section 219 as 220 and by inserting after section 218 the following new section:

"SEC. 219. RETIREMENT SAVINGS.

"(a) DEDUCTION ALLOWED.—In the case of an individual, there shall be allowed as a deduction amounts paid in cash during the taxable year by or on behalf of such individual for his benefit—

"(1) to an individual retirement account described in section 408(a),

"(2) for an individual retirement annuity described in section 408(b), or

"(3) for a retirement bond described in section 409 (but only if the bond is not redeemed within 12 months of the date of its issuance).

For purposes of this title, any amount paid by an employer to such a retirement account or for such a retirement annuity or bond shall constitute payment of compensation to the employee (other than a self-employed individual who is an employee within the meaning of section 401(c)(1)) includible in his gross income, whether or not a deduction for such

payment is allowable under this section to the employee after the application of subsection (b).

"(b) LIMITATIONS AND RESTRICTIONS.—

"(1) MAXIMUM DEDUCTION.—The amount allowable as a deduction under subsection (a) to an individual for any taxable year shall not exceed an amount equal to 20 percent of the compensation includible in his gross income for such taxable year, or $1,500, whichever is the lesser.

"(2) COVERED BY CERTAIN OTHER PLANS.—No deduction shall be allowed under subsection (a) for an individual for the taxable year if for any part of such year—

"(A) he was an active participant in—

"(i) a plan described in section 401 (a) which includes a trust exempt from tax under section 501 (a),

"(ii) an annuity plan described in section 403 (a),

"(iii) a qualified bond purchase plan described in section 405 (a), or

"(iv) a plan established for its employees by the United States, by a State or political division thereof, or by an agency or instrumentality of any of the foregoing, or

"(B) amounts were contributed by his employer for an annuity contract described in section 403 (b) (whether or not his rights in such contract are nonforfeitable).

"(3) CONTRIBUTIONS AFTER AGE 70½.—No deduction shall be allowed under subsection (a) with respect to any payment described in subsection (a) which is made during the taxable year of an individual who has attained age 70½ before the close of such taxable year.

"(4) RECONTRIBUTED AMOUNTS.—No deduction shall be allowed under this section with respect to a rollover contribution described in section 402 (a) (5), 403 (a) (4), or 408 (d) (3).

"(c) DEFINITIONS AND SPECIAL RULES.—

"(1) COMPENSATION.—For purposes of this section, the term 'compensation' includes earned income as defined in section 401 (c) (2).

"(2) MARRIED INDIVIDUALS.—The maximum deduction under subsection (b) (1) shall be computed separately for each individual, and this section shall be applied without regard to the community property laws of a State."

(2) DEDUCTION ALLOWED IN ARRIVING AT ADJUSTED GROSS INCOME.—Section 62 (defining adjusted gross income) is amended by inserting after paragraph (9) the following new paragraph:

"(10) RETIREMENT SAVINGS.—The deduction allowed by section 219 (relating to deduction of certain retirement savings)."

(b) INDIVIDUAL RETIREMENT ACCOUNTS.—Subpart A of part I of subchapter D of chapter 1 (relating to retirement plans) is amended by adding at the end thereof the following new section:

"SEC. 408. INDIVIDUAL RETIREMENT ACCOUNTS.

"(a) INDIVIDUAL RETIREMENT ACCOUNT.—For purposes of this section, the term 'individual retirement account' means a trust created or organized in the United States for the exclusive benefit of an individual or his beneficiaries, but only if the written governing instrument creating the trust meets the following requirements:

"(1) Except in the case of a rollover contribution described in subsection (d) (3) or in section 402 (a) (5) or 403 (a) (4), contributions will not be accepted for the taxable year in excess of $1,500 on behalf of any individual.

"(2) The trustee is a bank (as defined in section 401 (d) (1)) or such other person who demonstrates to

the satisfaction of the Secretary or his delegate that the manner in which such other person will adminster the trust will be consistent with the requirements of this section.

"(3) No part of the trust funds will be invested in life insurance contracts.

"(4) The interest of an individual in the balance in his account will be nonforfeitable.

"(5) The assets of the trust will not be commingled with other property except in a common trust fund.

"(6) The entire interest of an individual for whose benefit the trust is maintained will be distributed to him not later than the close of his taxable year in which he attains age 70½, or will be distributed, commencing before the close of such taxable year, in accordance with regulations prescribed by the Secretary or his delegate, over—

"(A) the life of such individual or the lives of such individual and his spouse, or

"(B) a period not extending beyond the life expectancy of such individual or the life expectancy of such individual and his spouse.

"(7) If an individual for whose benefit the trust is maintained dies before his entire interest has been distributed to him, or if distribution has been commenced

as provided in paragraph (6) to his surviving spouse and such surviving spouse dies before the entire interest has been distributed to such spouse, the entire interest (or the remaining part of such interest if distribution thereof has commenced) will, within 5 years after his death (or the death of the surviving spouse) be distributed, or applied to the purchase of an immediate annuity for his beneficiary or beneficiaries (or the beneficiary or beneficiaries of his surviving spouse) which will be payable for the life of such beneficiary or beneficiaries (or for a term certain not extending beyond the life expectancy of such beneficiary or beneficiaries) and which annuity will be immediately distributed to such beneficiary or beneficiaries. The preceding sentence shall have no application if distributions over a term certain commenced before the death of the individual for whose benefit the trust was maintained and the term certain is for a period permitted under paragraph (6).

"(b) Individual Retirement Annuity.—For purposes of this section, the term 'individual retirement annuity' means an annuity contract issued by an insurance company which meets the following requirements:

"(1) The contract is not transferable by the owner.

"(2) The annual premium under the contract will not exceed $1,500, and any refund of premiums will be

applied before the close of the calendar year following the year of the refund toward the payment of future premiums or the purchase of additional benefits.

"(3) The entire interest of the owner will be distributed to him not later than the close of his taxable year in which he attains age $70\frac{1}{2}$, or will be distributed, in accordance with regulations prescribed by the Secretary or his delegate, over—

"(A) the life of such owner or the lives of such owner and his spouse, or

"(B) a period not extending beyond the life expectancy of such owner or the life expectancy of such owner and his spouse.

"(4) If the owner dies before his entire interest has been distributed to him, or if distribution has been commenced as provided in paragraph (3) to his surviving spouse and such surviving spouse dies before the entire interest has been distributed to such spouse, the entire interest (or the remaining part of such interest if distribution thereof has commenced) will, within 5 years after his death (or the death of the surviving spouse) be distributed, or applied to the purchase of an immediate annuity for his beneficiary or beneficiaries (or the beneficiary or beneficiaries of his surviving spouse) which will be payable for the life of such beneficiary or benefi-

ciaries (or for a term certain not extending beyond the life expectancy of such beneficiary or beneficiaries) and which annuity will be immediately distributed to such beneficiary or beneficiaries. The preceding sentence shall have no application if distributions over a term certain commenced before the death of the owner and the term certain is for a period permitted under paragraph (3).

"(5) The entire interest of the owner is nonforfeitable.

Such term does not include such an annuity contract for any taxable year of the owner in which it is disqualified on the application of subsection (e) or for any subsequent taxable year.

"(c) ACCOUNTS ESTABLISHED BY EMPLOYERS AND CERTAIN ASSOCIATIONS OF EMPLOYEES.—A trust created or organized in the United States by an employer for the exclusive benefit of his employees or their beneficiaries, or by an association of employees (which may include employees within the meaning of section 401 (c) (1)) for the exclusive benefit of its members or their beneficiaries, shall be treated as an individual retirement account (described in subsection (a)), but only if the written governing instrument creating the trust meets the following requirements:

"(1) The trust satisfies the requirements of paragraphs (1) through (7) of subsection (a).

"(2) There is a separate accounting for the interest of each employee or member.

The assets of the trust may be held in a common fund for the account of all individuals who have an interest in the trust.

"(d) TAX TREATMENT OF DISTRIBUTIONS.—

"(1) IN GENERAL.—Except as otherwise provided in this subsection, any amount paid or distributed out of an individual retirement account or under an individual retirement annuity, shall be included in gross income by the payee for the taxable year in which the payment or distribution is received. The basis of any person in such an account or annuity shall be zero.

"(2) DISTRIBUTIONS OF ANNUITY CONTRACTS.—Paragraph (1) shall not apply to any annuity contract which meets the requirements of paragraphs (1), (3), (4), and (5) of subsection (b) and which is distributed from an individual retirement account. Section 72 shall apply to any such annuity contract, and for purposes of section 72 the investment in such contract shall be zero.

"(3) ROLLOVER CONTRIBUTION.—An amount is described in this paragraph as a rollover contribution if it meets the requirements of subparagraphs (A) and (B).

"(A) IN GENERAL.—Paragraph (1) shall not apply to any amount paid or distributed out of an individual retirement account or individual retirement annuity to an individual if—

"(i) such individual is a person for whose benefit the account is maintained, and

"(ii) the entire amount received (including any property other than money) is paid into an individual retirement account or individual retirement annuity (created for such individual's benefit) not later than the 60th day after the day on which he receives the payment or distribution.

"(B) LIMITATION.—This subsection shall not apply to any amount received by an individual from an individual retirement account or individual retirement annuity if at any time during the 3-year period ending on the day of such receipt such individual received any other amount from an individual retirement account or individual retirement annuity which was not includible in his gross income because of the application of this paragraph.

"(4) EXCESS CONTRIBUTIONS RETURNED BEFORE DUE DATE OF RETURN.—Paragraph (1) shall not apply to the distribution of any contribution paid during a

taxable year to an individual retirement account or for an individual retirement annuity to the extent that such contribution exceeds the amount allowable as a deduction under section 219 if—

"(A) such distribution is received on or before the day prescribed by law (including extensions) for filing such individual's return for such taxable year,

"(B) no deduction is allowed under section 219 with respect to such excess contribution, and

"(C) such distribution is accompanied by the amount of net income attributable to such excess contribution.

Any net income described in subparagraph (C) shall be included in the gross income of the individual for the taxable year in which received.

"(e) Tax Treatment of Accounts and Annuities.—

"(1) Exemption from tax.—Any individual retirement account shall be exempt from taxation under this subtitle unless such account has ceased to be an individual retirement account by reason of paragraph (2). Notwithstanding the preceding sentence, any such account shall be subject to the taxes imposed by sec-

tion 511 (relating to imposition of tax on unrelated business income of charitable, etc., organizations).

"(2) LOSS OF EXEMPTION OF ACCOUNT WHERE EMPLOYEE ENGAGES IN PROHIBITED TRANSACTION.—

"(A) IN GENERAL.—If during any taxable year of the individual for whose benefit any individual reitrement account was established there is any transaction described in subsection (b) or (g) of section 503, such account shall cease to be an individual retirement account as of the first day of such taxable year. For purposes of this paragraph—

"(i) the individual for whose benefit any account was established shall be treated as the creator of such account, and

"(ii) the separate account for any individual within an individual retirement account maintained by an employer or association of employees shall be treated as a separate individual retirement account.

"(B) ACCOUNT TREATED AS DISTRIBUTING ALL ITS ASSETS.—In any case in which any account ceases to be an individual retirement account by reason of subparagraph (A) as of the

first day of any taxable year, paragraph (1) of subsection (d) shall apply as if there were a distribution on such first day in an amount equal to the fair market value (on such first day) of all assets in the account (on such first day).

"(3) EFFECT OF BORROWING ON ANNUITY CONTRACT.—If during any taxable year the owner of an individual retirement annuity borrows any money under or by use of such contract, the contract shall cease to be an individual retirement annuity as of the first day of such taxable year. Such owner shall include in gross income for such year an amount equal to the fair market value of such contract as of such first day.

"(4) LOSS OF EMPLOYER DEDUCTIONS WHERE EMPLOYER ENGAGES IN PROHIBITED TRANSACTION.—If during any taxable year of an employer there is any transaction described in subsection (b) or (g) of section 503 with respect to any individual retirement account maintained by such employer, all deductions of such employer for compensation paid or accrued for such taxable year and for all prior taxable years shall be disallowed to the extent of contributions to such individual retirement account paid during such year. For purposes of this paragraph, the employer shall be

treated as the creator of each individual retirement account maintained by him.

"(f) PENALTY TAX ON CERTAIN AMOUNTS INCLUDED IN GROSS INCOME BEFORE AGE 59½.—

"(1) EARLY DISTRIBUTIONS FROM AN INDIVIDUAL RETIREMENT ACCOUNT, ETC.—If a distribution from an individual retirement account or under an individual retirement annuity to the individual for whose benefit such account or annuity was established is made before such individual attains age 59½, his tax under this chapter for the taxable year in which such distribution is received shall be increased by an amount equal to 10 percent of the amount of the distribution which is includible in his gross income for such taxable year.

"(2) DISQUALIFICATION CASES.—If an amount is includible in gross income for a taxable year under subsection (e) and the taxpayer has not attained age 59½ before the beginning of such taxable year, his tax under this chapter for such taxable year shall be increased by an amount equal to 10 percent of such amount so required to be included in his gross income.

"(3) DISABILITY CASES.—Paragraphs (1) and (2) shall not apply if the amount paid or distributed, or the disqualification of the account or annuity under

subsection (e), is attributable to the taxpayer becoming disabled within the meaning of section 72(m)(7).

"(g) COMMUNITY PROPERTY LAWS.—This section shall be applied without regard to the community property laws of any State.

"(h) CUSTODIAL ACCOUNTS.—For purposes of this section, a custodial account shall be treated as a trust if the assets of such account are held by a bank (as defined in section 401(d)(1) or another person who demonstrates, to the satisfaction of the Secretary or his delegate, that the manner in which he will hold the assets will be consistent with the requirements of this section. For purposes of this title, in the case of a custodial account treated as a trust by reason of the preceding sentence, the custodian of such account shall be treated as the trustee thereof.

"(i) REPORTS.—The trustee of an individual retirement account or the issuer of an individual retirement annuity shall submit to the Secretary or his delegate such reports regarding contributions to such account or annuity distributions from such account or annuity, and other matters relating to such account or annuity as may be required by regulations prescribed by the Secretary or his delegate. Such reports shall be filed at such time and in such manner as may be required by such regulations.

"(j) CROSS REFERENCES.—

"(1) For tax on excess contributions to individual retirement accounts or annuities, see section 4973.

"(2) For tax on certain accumulations in individual retirement accounts or annuities, see section 4974."

(c) RETIREMENT BONDS.—Subpart A of part I of subchapter D of chapter 1 (relating to retirement plans) is amended by inserting after section 408 the following new section:

"SEC. 409. RETIREMENT BONDS.

"(a) RETIREMENT BOND.—For purposes of this section and section 219 (a), the term 'retirement bond' means a bond issued under the Second Liberty Bond Act, as amended, which by its terms, or by regulations prescribed by the Secretary under such Act—

"(1) provides for payment of interest, or investment yield, only on redemption;

"(2) provides that no interest, or investment yield, is payable if the bond is redeemed within 12 months after the date of its issuance;

"(3) provides that it ceases to bear interest, or provide investment yield, on the earlier of—

"(A) the date on which the individual in whose name it is purchased (hereinafter in this section referred to as the 'registered owner') attains age 70½; or

"(B) 5 years after the date on which the registered owner dies, but not later than the date on

which he would have attained the age 70½ had he lived;

"(4) may be redeemed before the death of the registered owner only if such owner—

"(A) has attained age 59½,

"(B) has become disabled (within the meaning of section 72 (m) (7)), or

"(C) tenders the bond for redemption within 12 months after the date of its issuance; and

"(5) is not transferable.

"(b) INCOME TAX TREATMENT OF BONDS.—

"(1) IN GENERAL.—Except as otherwise provided in this subsection, on the redemption of a retirement bond the entire proceeds shall be included in the gross income of the taxpayer entitled to the proceeds on redemption. If the registered owner has not tendered it for redemption before the close of the taxable year in which he attains age 70½, such individual shall include in his gross income for such taxable year the amount of proceeds he would have received if the bond had been redeemed at age 70½. The provisions of section 72 (relating to annuities) and section 1232 (relating to bonds and other evidences of indebtedness) shall not apply to a retirement bond.

"(2) BASIS.—The basis of a retirement bond shall

be zero, whether or not the registered owner was allowed a deduction under section 219 for the amount paid for the bond.

"(3) EXCEPTIONS.—

"(A) REDEMPTION WITHIN 12 MONTHS.—If a retirement bond is redeemed within 12 months after the date of its issuance, the proceeds shall be excluded from gross income if no deduction is allowed under section 219 on account of the purchase of such bond.

"(B) REDEMPTION AFTER AGE 70½.—If a retirement bond is redeemed after the close of the taxable year in which the registered owner attains age 70½, there shall be included in gross income on the redemption of the bond only the amount by which the proceeds on redemption exceed the amount included in his gross income for such taxable year."

(d) EXCISE TAX ON EXCESS CONTRIBUTIONS.—Chapter 43 (relating to qualified pension, etc., plans) is amended by inserting after section 4972 the following new section:

"SEC. 4973. TAX ON EXCESS CONTRIBUTIONS TO INDIVIDUAL RETIREMENT ACCOUNTS.

"(a) TAX IMPOSED.—In the case of—

"(1) any individual retirement account (within the meaning of section 408 (a)), or

"(2) any individual retirement annuity (within the meaning of section 408 (b)),

established for the benefit of any individual, there is hereby imposed for each taxable year a tax in an amount equal to 6 percent of the amount of the excess contributions to such individual's accounts or annuities (determined as of the close of the taxable year). The tax imposed by this subsection shall be paid by such individual.

"(b) EXCESS CONTRIBUTIONS.—For purposes of this subsection, in the case of individual retirement accounts or individual retirement annuities, the term 'excess contributions' means the sum of—

"(1) the excess (if any) of—

"(A) the amount contributed for the taxable year to the accounts or for the annuities (other than a rollover contribution described in section 402 (a) (5), 403 (a) (4), or 408 (d) (3)), over

"(B) the amount allowable as a deduction under section 219 for such contributions, and

"(2) the amount determined under this paragraph for the preceding taxable year, reduced by the excess (if any) of the maximum amount allowable as a deduction under section 219 for the taxable year over the amount

contributed to the accounts or for the annuities for the taxable year and reduced by the sum of the distributions out of the account (for the taxable year and all prior taxable years) which were included in the gross income of the payee under section 408 (d) (1). For purposes of this paragraph, any contribution which is distributed out of the individual retirement account or individual retirement annuity in a distribution to which section 408 (d) (4) applies shall be treated as an amount not contributed."

(e) EXCISE TAX ON EXCESSIVE ACCUMULATIONS.—Chapter 43 is amended by inserting after section 4973 the following new section:

"SEC. 4974. EXCISE TAX ON CERTAIN ACCUMULATIONS IN INDIVIDUAL RETIREMENT ACCOUNTS OR ANNUITIES.

"(a) IMPOSITION OF TAX.—If, in the case of an individual retirement account or individual retirement annuity, the amount distributed during the taxable year of the payee is less than the minimum amount required to be distributed under section 408 (a) (6) or (7), or 408 (b) (3) or (4) during such year, there is hereby imposed a tax equal to 50 percent of the amount by which the minimum amount required to be distributed during such year

exceeds the amount actually distributed during the year. The tax imposed by this section shall be paid by such payee.

"(b) REGULATIONS.—For purposes of this section, the minimum amount required to be distributed during a taxable year under section 408(a) (6) or (7), or 408(b) (3) or (4) shall be determined under regulations prescribed by the Secretary or his delegate."

(f) PENALTY FOR FAILURE TO PROVIDE REPORTS ON INDIVIDUAL RETIREMENT ACCOUNTS.—Subchapter B of chapter 68 (relating to assessable penalties) is amended by adding at the end thereof the following new section:

"SEC. 6693. FAILURE TO PROVIDE REPORTS ON INDIVIDUAL RETIREMENT ACCOUNTS OR ANNUITIES.

"(a) The person required by section 408(i) to file a report regarding an individual retirement account or individual retirement annuity at the time and in the manner required by section 408(i) shall pay a penalty of $10 for each failure unless it is shown that such failure is due to reasonable cause.

"(b) DEFICIENCY PROCEDURES NOT TO APPLY.—Subchapter B of chapter 63 (relating to deficiency procedures for income, estate, gift, and certain excise taxes) shall not apply to the assessment or collection of any penalty imposed by subsection (a)."

(g) Conforming Amendments.—

(1) Section 37(c)(1) (defining retirement income) is amended—

(A) by adding at the end of subparagraph (E) the following: "retirement bonds described in section 409, or".

(B) by adding the following new subparagraph:

"(F) an individual retirement account described in section 408(a) or an individual retirement annuity described in section 408(b), or".

(2) The second sentence of section 46(a)(3) and the second sentence of section 50A(a)(3) are each amended by striking out "tax preferences)," and inserting in lieu thereof "tax preferences), section 408 (e) (relating to additional tax on income from certain retirement accounts),".

(3) The third sentence of section 901(a) is amended by striking out "tax preferences)," and inserting in lieu thereof "tax preferences, against the tax imposed for the taxable year by section 408(e) (relating to additional tax on income from certain retirement accounts),".

(4) Subparagraph (A) of section 56(a)(2) and paragraph (1) of section 56(c) are each amended by

striking out "531" and inserting in lieu thereof "408 (f), 531,".

(5) Section 402 (a) (relating to taxability of beneficiaries of exempt trust) is amended by inserting after paragraph (4) the following new paragraph:

"(5) TRANSFER TO INDIVIDUAL RETIREMENT ACCOUNT.—In the case of an employees' trust described in section 401 (a) which is exempt from tax under section 501 (a), if—

"(A) the balance to the credit of an employee is paid to him in one or more distributions within 1 taxable year of the employee on account of his separation from the service,

"(B) the employee transfers all the property he receives in such distributions to an individual retirement account described in section 408 (a) or to an individual retirement annuity described in section 408 (b) on or before the 60th day after the day on which he received such property, to the extent the fair market value of such property exceeds the amount referred to in subsection (e) (1) (D) (i), and

"(C) the amount so transferred consists of the property (other than money) distributed, to the extent that the fair market value of such property does

not exceed the amount required to be transferred pursuant to subparagraph (B),

then such distributions shall not be includible in gross income for the year in which paid. Such transfer shall be treated as a rollover contribution as described in section 408 (d) (3)."

(6) Section 403 (a) (relating to taxation of employee annuities) is amended by adding after paragraph (3) the following new paragraph:

"(4) TRANSFER TO INDIVIDUAL RETIREMENT ACCOUNT.—In the case of an employees' trust described in section 401 (a) which is exempt from tax under section 501 (a), if—

"(A) the balance to the credit of an employee is paid to him in one or more distributions within 1 taxable year of the employee on account of his separation from the service,

"(B) the employee transfers all the property he receives in such distributions to an individual account described in section 408 (a) or to an individual retirement annuity described in section 408 (b) on or before the 60th day after the day on which he received such property to the extent the fair market value of such property exceeds the

amount referred to in subsection (e) (4) (D) (i), and

"(C) the amount so transferred consists of the property distributed, to the extent that the fair market value of such property does not exceed the amount required to be transferred pursuant to subparagraph (B),

then such transfer shall be treated as a rollover contribution (within the meaning of section 408 (d) (3), and such distributions shall not be includible in gross income for the year in which paid."

(7) Section 3401 (a) (12) (relating to exemption from collection of income tax at source on certain wages) is amended by adding at the end thereof the following new subparagraph:

"(D) for a payment described in section 219 (a) if, at the time of such payment, it is reasonable to believe that the employee will be entitled to a deduction under such section for such payment; or".

(8) Section 6047 (relating to information relating to certain trusts and annuity and bond purchase plans) is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

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"(d) OTHER PROGRAMS.—To the extent provided by regulations prescribed by the Secretary or his delegate, the provisions of this section shall be applicable with respect to any payment described in section 219 (a) and to transactions of any trust described in section 408 (a) or under an individual retirement annuity described in section 408 (b)."

(9) PENSION PLAN RESERVES.—Section 805 (d) (1) (relating to definition of pension plan reserves) is amended by striking out "or" at the end of subparagraph (C), by striking out "foregoing." at the end of subparagraph (D) and inserting in lieu thereof "foregoing; or", and by adding at the end thereof the following new subparagraph:

"(E) purchased under contracts entered into with trusts which (as of the time the contracts were entered into) were deemed to be individual retirement accounts described in section 408 (a) or under contracts entered into with individual retirement annuities described in section 408 (b)."

(10) TREATMENT OF DISTRIBUTION FROM INDIVIDUAL RETIREMENT ACCOUNTS.—Section 72 (relating to annuities) is amended—

(A) by inserting after "501 (a)" in subsection (m) (4) (A) ", an individual retirement

account described in section 408 (a), an individual retirement annuity described in section 408 (b)".

(B) by striking out at the end of subsection (m) (6) "401 (c) (3)" and inserting in lieu thereof "401 (c) (3) and includes an individual for whose benefit an individual retirement account or annuity described in section 408 (a) or (b) is maintained".

(11) BASIS FOR ASSETS HELD FOR CERTAIN CONTRACTS.—Section 801 (g) (7) (relating to basis of assets held for qualified pension plan contracts) is amended by striking out "or (D)" and inserting in lieu thereof "(D), or (E)".

(h) CLERICAL AMENDMENTS.—

(1) The table of sections for part VII of subchapter B of chapter 1 is amended by striking out the item relating to section 219 and inserting in lieu thereof the following:

"Sec. 219. Retirement savings.
"Sec. 220. Cross references."

(2) The table of sections for subpart A of part I of subchapter D of chapter 1 is amended by adding at the end thereof the following:

"Sec. 408. Individual retirement accounts.
"Sec. 409. Retirement bonds.".

(3) The table of sections for chapter 43 is amended by inserting after the item relating to section 4972 the following new items:

"Sec. 4973. Tax on excess contributions to individual retirement accounts.
"Sec. 4974. Tax on certain accumulations in individual retirement accounts.".

(i) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to taxable years beginning after December 31, 1973. The amendments made by this section (other than subsection (a)) shall take effect January 1, 1974.

SEC. 2003. LIMITATIONS ON BENEFITS AND CONTRIBUTIONS.

(a) PLAN REQUIREMENTS.—

(1) Section 401(a) (relating to requirements for qualification) is amended by inserting after paragraph (15) the following new paragraph:

"(16) A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides for benefits or contributions which do not exceed the limitations of section 415."

(2) Subpart B of part I of subchapter D of chapter 1 is amended by inserting after section 414 the following new section:

"SEC. 415. LIMITATIONS ON BENEFITS AND CONTRIBUTIONS UNDER QUALIFIED PLANS.

"(a) GENERAL RULE.—

"(1) TRUSTS.—A trust which is a part of a pen-

sion, profit-sharing, or stock bonus plan shall not constitute a qualified trust under section 401 (a) if—

"(A) in the case of a defined benefit plan, the plan provides for the payment of benefits with respect to a participant which exceed the limitation of subsection (b),

"(B) in the case of a defined contribution plan, under the plan contributions and other additions with respect to any participant for any taxable year exceed the limitation of subsection (c), or

"(C) in any case in which an individual is a participant in both a defined benefit plan and a defined contribution plan maintained by the employer, the trust has been disqualified under subsection (e) (5).

"(2) SECTION APPLIES TO CERTAIN ANNUITIES AND ACCOUNTS.—In the case of—

"(A) an employee annuity plan described in section 403 (a),

"(B) any annuity contract described in section 403 (b),

"(C) an individual retirement account described in section 408 (a), or

"(D) an individual retirement annuity described in section 408 (b),

such contract, annuity plan, account, or annuity shall not be considered to be described in section 403 (a), 403 (b), 408 (a), or 408 (b), as the case may be, unless it satisfies the requirements of subparagraph (A) or subparagraph (B) of paragraph (1), whichever is appropriate, and has not been disqualified under subsection (e) (5).

"(b) LIMITATION FOR DEFINED BENEFIT PLANS.—

"(1) IN GENERAL.—Benefits with respect to a participant exceed the limitation of this subsection if, when expressed as an annual benefit (within the meaning of paragraph (2)), such annual benefit is greater than the lesser of—

"(A) $75,000, or

"(B) 100 percent of the participant's average compensation for his high 3 years.

"(2) ANNUAL BENEFIT.—

"(A) IN GENERAL.—For purposes of paragraph (1), the term 'annual benefit' means a benefit payable annually in the form of a straight life annuity (with no ancillary benefits) under a plan to which employees do not contribute.

"(B) ADJUSTMENT FOR CERTAIN OTHER FORMS OF BENEFITS OR FOR EMPLOYEE CONTRIBUTIONS.—If the benefit under the plan is payable in

any form other than the form set forth in subparagraph (A), or if the employees contribute to the plan, the determination as to whether the limitation set forth in paragraph (1) has been satisfied shall be made, in accordance with regulations prescribed by the Secretary or his delegate, by adjusting such benefit so that it is equivalent to the benefit referred to in subparagraph (A). For purposes of this subparagraph, any ancillary benefit which is not directly related to retirement income benefits shall not be taken into account; and that portion of any joint and survivor feature which constitutes a qualified joint and survivor annuity shall not be taken into account.

"(C) ADJUSTMENT TO $75,000 LIMIT WHERE BENEFIT BEGINS BEFORE AGE 55.—If the retirement income benefit under the plan begins before age 55, the determination as to whether the $75,000 limitation set forth in paragraph (1) (A) has been satisfied shall be made, in accordance with regulations prescribed by the Secretary or his delegate, by adjusting such benefit so that it is equivalent to such a benefit beginning at age 55.

"(D) QUALIFIED JOINT AND SURVIVOR BENEFIT.—For purposes of this paragraph, the term

'qualified joint and survivor benefit' means a form of benefit under which (i) there is a joint and survivor annuity for the benefit of the participant and his spouse, and (ii) the benefit payable to the survivor is not greater than the benefit which would be payable if both the participant and his spouse were alive.

"(3) AVERAGE COMPENSATION FOR HIGH 3 YEARS.—For purposes of paragraph (1), a participant's high 3 years shall be the period of consecutive calendar years (not more than 3) during which the participant was both an active participant in the plan and had the greatest aggregate compensation from the employer. In the case of an employee within the meaning of section 401 (c) (1), the preceding sentence shall be applied by substituting for 'compensation from the employer' the participant's earned income (within the meaning of section 401 (c) (2) but determined without regard to any exclusion under section 911).

"(4) TOTAL ANNUAL BENEFITS NOT IN EXCESS OF $10,000.—Notwithstanding the preceding provisions of this subsection, the benefits payable with respect to a participant under any defined benefit plan shall be deemed not to exceed the limitation of this subsection if—

"(A) the retirement benefits payable with respect to such participant under such plan and under all other defined benefit plans of the employer do not exceed $10,000 for the plan year, and do not exceed $10,000 for any prior plan year, and

"(B) the employer has not at any time maintained a defined contribution plan in which the participant participated.

"(5) REDUCTION FOR SERVICE LESS THAN 10 YEARS.—In the case of an employee who has less than 10 years of service with the employer, the limitation referred to in paragraph (1), and the limitation referred to in paragraph (4), shall be the limitation determined under such paragraph (without regard to this paragraph), multiplied by a fraction, the numerator of which is the number of years (or part thereof) of service with the employer and the denominator of which is 10.

"(c) LIMITATION FOR DEFINED CONTRIBUTION PLANS.—

"(1) IN GENERAL.—Contributions and other additions with respect to a participant exceed the limitation of this subsection if, when expressed as an annual addition to the participant's account (within the meaning of paragraph (2)), such annual addition is greater than the lesser of—

"(A) $25,000, or

"(B) 25 percent of the participant's compensation.

"(2) ANNUAL ADDITION.—For purposes of paragraph (1), the term 'annual addition' means the sum for any year of—

"(A) employer contributions,

"(B) the lesser of—

"(i) the amount of the employee contributions in excess of 6 percent of his compensation, or

"(ii) one-half of the employee contributions, and

"(C) forfeitures.

"(3) PARTICIPANT'S COMPENSATION.—For purposes of paragraph (1), the term 'participant's compensation' means the compensation of the participant from the employer for the year. In the case of an employee within the meaning of section 401(c)(1), the preceding sentence shall be applied by substituting for 'compensation of the participant from the employer' the participant's earned income (within the meaning of section 401(c)(2) but determined without regard to any exclusion under section 911).

"(d) COST-OF-LIVING ADJUSTMENTS.—

"(1) IN GENERAL.—The Secretary or his delegate shall adjust annually—

"(A) the \$75,000 amount in subsection (b) (1) (A),

"(B) the \$25,000 amount in subsection (c) (1) (A), and

"(C) in the case of a participant who is separated from the service, the amount taken into account under subsection (b) (1) (B),

for increases in the cost of living in accordance with regulations prescribed by the Secretary or his delegate. Such regulations shall provide for adjustment procedures which are similar to the procedures used to adjust primary insurance amounts under section 215 (i) (2) (A) of the Social Security Act.

"(2) BASE PERIODS.—The base period taken into account—

"(A) for purposes of subparagraphs (A) and (B) of paragraph (1) shall be the calendar quarter beginning October 1, 1973, and

"(B) for purposes of subparagraph (C) of paragraph (1) shall be the last calendar quarter of the calendar year before the calendar year in which the participant is separated from the service.

"(e) LIMITATION IN CASE OF DEFINED BENEFIT PLAN AND DEFINED CONTRIBUTION PLAN FOR SAME EMPLOYEE.—

"(1) IN GENERAL.—In any case in which an individual is a participant in both a defined benefit plan and a defined contribution plan maintained by the employer, the sum of the defined benefit plan fraction and the defined contribution plan fraction for any year shall not exceed 1.4.

"(2) DEFINED BENEFIT PLAN FRACTION.—For purposes of this subsection, the defined benefit plan fraction for any year is a fraction—

"(A) the numerator of which is the projected benefit of the participant under the plan (determined as of the close of the year), and

"(B) the denominator of which is the projected benefit of the participant under the plan (determined as of the close of the year) if the plan provided the maximum benefit allowable under subsection (b).

For purposes of this paragraph, the term 'benefit' means an annual benefit as defined in subsection (b) (2).

"(3) DEFINED CONTRIBUTION PLAN FRACTION.—For purposes of this subsection, the defined contribution plan fraction for any year is a fraction—

"(A) the numerator of which is the sum of the annual additions to the participant's account as of the close of the year, and

"(B) the denominator of which is the sum of the maximum amount of annual additions to such account which could have been made under subsection (c) for such year and for each prior year of service with the employer.

"(4) SPECIAL TRANSITION RULES FOR DEFINED CONTRIBUTION FRACTION.—In applying paragraph (3) with respect to years beginning before January 1, 1976—

"(A) the aggregate amount taken into account under paragraph (3) (A) shall not exceed the aggregate amount taken into account under paragraph (3) (B), and

"(B) the amount taken into account under subsection (c) (2) (B) (i) for any year concerned shall be an amount equal to—

"(i) the excess of the aggregate amount of employee contributions for all years beginning before January 1, 1976, during which the employee was an active participant of the plan, over 10 percent of the employee's aggregate compensation for all such years, multiplied by

"(ii) a fraction the numerator of which is 1 and the denominator of which is the number of years beginning before January 1, 1976,

during which the employee was an active participant in the plan.

Employee contributions made on or after October 2, 1973, shall be taken into account under subparagraph (B) of the preceding sentence only to the extent that the amount of such contributions does not exceed the maximum amount of contributions permissible under the plan as in effect on October 2, 1973.

"(5) DISQUALIFICATION OF TRUSTS AND PLANS.—If, but for this paragraph, the sum referred to in paragraph (1) would exceed 1.4, the Secretary or his delegate shall, under regulations, disqualify one or more trusts, one or more plans, or both, until such sum does not exceed 1.4. In addition to taking into account such other factors as may be necessary to carry out the purposes of this subsection, the regulations prescribed under this paragraph shall provide that—

"(A) no plan which has terminated shall be disqualified until all other plans have been disqualified, and

"(B) the plan (or combination of plans) having the least number of participants shall be disqualified first.

"(6) SPECIAL RULES FOR SECTIONS 403(b) AND 408.—For purposes of this subsection, any annuity

contract described in section 403(b), any individual retirement account described in section 408(a), and any individual retirement annuity described in section 408(b) for the benefit of a participant shall be treated as a defined contribution plan maintained by each employer with respect to which the participant has the control required under subsection (b) or (c) of section 414 (as modified by subsection (h)). In the case of any annuity contract described in section 403(b), the amount of the contribution disqualified by reason of paragraph (5) of this subsection shall reduce the exclusion allowance provided in section 403(b)(2).

"(f) COMBINING OF PLANS.—

"(1) IN GENERAL.—For purposes of applying the limitations of subsections (b), (c), and (e) (other than subsection (e)(5))—

"(A) all defined benefit plans (whether or not terminated) of an employer shall be treated as one defined benefit plan, and

"(B) all defined contribution plans (whether or not terminated) of an employer shall be treated as one defined contribution plan.

"(2) ANNUAL COMPENSATION TAKEN INTO ACCOUNT FOR DEFINED BENEFIT PLANS.—If the employer has more than one defined benefit plan—

"(A) subsection (b) (1) (B) shall be applied separately with respect to each such plan, but

"(B) in applying subsection (b) (1) (B) to the aggregate of such defined benefit plans for purposes of this subsection, the high 3 years of compensation taken into account shall be the period of consecutive calendar years (not more than 3) during which the individual had the greatest aggregate compensation from the employer.

"(g) PAYMENT OF ADDITIONAL BENEFITS.—Nothing in this section or section 412 shall be construed to require the disqualification of any plan solely by reason of the provision of benefits for any individual in addition to the benefits which may be provided under the limitations of subsections (b), (c), and (e) if the contributions of the employer for the purpose of providing such additional benefits are not allowable as a deduction to the employer before they are includible in the gross income of the individual.

"(h) 50 PERCENT CONTROL.—For purposes of applying subsections (b) and (c) of section 414 to this section, the phrase 'more than 50 percent' shall be substituted for the phrase 'at least 80 percent' each place it appears in section 1563 (a) (1).

"(i) RECORDS NOT AVAILABLE FOR PAST PERIODS.—Where for the period before January 1, 1976, or (if later)

the first day of the first plan year of the plan, the records necessary for the application of this section are not available, the Secretary or his delegate may by regulations prescribe alternative methods for determining the amounts to be taken into account for such period."

(b) LIMIT ON EMPLOYER DEDUCTIONS.—The second sentence of section 404 (a) (3) (A) (relating to limits on deductible contributions) is amended by striking out "beneficiaries under the plan." and inserting in lieu thereof "beneficiaries under the plan, but the amount so deductible under this sentence in any one succeeding taxable year together with the amount so deductible under the first sentence of this subparagraph shall not exceed 25 percent of the compensation otherwise paid or accrued during such taxable year to the beneficiaries under the plan."

(c) CERTAIN ANNUITY AND BOND PURCHASE PLANS.—

(1) Section 404 (a) (2) (relating to the general rule for deduction for employee annuities) is amended by striking out "(15)" and inserting in lieu thereof "(15), (16), and (19)".

(2) Section 405 (a) (1) (relating to requirements for qualified bond purchase plans) is amended by striking out "and (8)," and inserting in lieu thereof "(8), (16), and (19)".

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(3) Section 805(d)(1)(C) (relating to pension plan reserves) is amended by striking out "and (15)" and inserting in lieu thereof "(15), (16), and (19)".

(4) Section 403(b)(2) (relating to exclusion allowance) is amended by adding at the end thereof the following new sentence: "The exclusion allowance for any employee for the taxable year shall be reduced to the maximum amount not disqualified by section 415(e) (relating to limitations on benefits and contributions under qualified plans)."

(d) EFFECTIVE DATE.—

(1) GENERAL RULE.—The amendments made by this section shall apply to contributions made or benefits accrued in years beginning after December 31, 1975.

(2) TRANSITION RULE FOR DEFINED BENEFIT PLANS.—In the case of an individual who was an active participant in a defined benefit plan on October 2, 1973, if—

(A) the annual benefit (within the meaning of section 415(b)(2) of the Internal Revenue Code of 1954) payable to such participant on retirement does not exceed 100 percent of his annual rate of compensation on such date, and

(B) such annual benefit is no greater than the annual benefit which would have been payable to

such participant on retirement if (i) all the terms and conditions of such plan in existence on such date had remained in existence until such retirement, and (ii) his compensation taken into account for any period after October 2, 1973, had not exceeded his annual rate of compensation on such date,

then such annual benefit shall be treated as not exceeding the limitation of subsection (b) of section 415 of the Internal Revenue Code of 1954.

SEC. 2004. TAXATION OF CERTAIN LUMP SUM DISTRIBUTIONS.

(a) TREATMENT OF TOTAL DISTRIBUTIONS.—Section 402(e) (relating to certain plan terminations) is amended to read as follows:

"(e) TAX ON LUMP SUM DISTRIBUTIONS.—

"(1) IMPOSITION OF SEPARATE TAX ON LUMP SUM DISTRIBUTIONS.—

"(A) SEPARATE TAX.—There is hereby imposed a tax (in the amount determined under subparagraph (B)) on the ordinary income portion of a lump sum distribution.

"(B) AMOUNT OF TAX.—The amount of tax imposed by subparagraph (A) for any taxable year shall be an amount equal to the amount of the

initial separate tax for such taxable year multiplied by a fraction, the numerator of which is the ordinary income portion of the lump sum distribution for the taxable year and the denominator of which is the total taxable amount of such distribution for such year.

"(C) INITIAL SEPARATE TAX.—The initial separate tax for any taxable year is an amount equal to 10 times the tax which would be imposed by subsection (c) of section 1 if the recipient were an individual referred to in such subsection and the taxable income were an amount equal to one-tenth of the excess of—

"(i) the total taxable amount of the lump sum distribution for the taxable year, over

"(ii) the minimum distribution allowance.

"(D) MINIMUM DISTRIBUTION ALLOWANCE.—For purposes of this paragraph, the minimum distribution allowance for the taxable year is an amount equal to—

"(i) the lesser of $10,000 or one-half of the total taxable amount of the lump sum distribution for the taxable year, reduced (but not below zero) by

"(ii) 20 percent of the amount (if any)

by which such total taxable amount exceeds $20,000.

"(E) LIABILITY FOR TAX.—The recipient shall be liable for the tax imposed by this paragraph.

"(2) MULTIPLE DISTRIBUTIONS AND DISTRIBUTIONS OF ANNUNITY CONTRACTS.—In the case of any recipient of a lump sum distribution for the taxable year with respect to whom during the 6-taxable-year period ending on the last day of the taxable year there has been one or more other lump sum distributions after December 31, 1973, in computing the tax imposed by paragraph (1) (A), the total taxable amounts of all such distributions during such 6-taxable-year period shall be aggregated, but the amount of tax so computed shall be reduced by the amount of the tax imposed by paragraph (1) (A) paid with respect to such other distributions. For purposes of this paragraph, a beneficiary of a trust to which a lump sum distribution is made shall be treated as the recipient of such distribution if the beneficiary is an employee (including an employee within the meaning of section 401 (c) (1)) with respect to the plan under which the distribution is made or if the beneficiary is treated as the owner of such trust for purposes of subpart E of part I of subchapter J. In the case of the distribution of an annuity contract, the taxable amount of such dis-

tribution shall be deemed to be the fair market value of the contract, determined on the date of such distribution. The Secretary or his delegate shall prescribe such regulations as may be necessary to carry out the purposes of this paragraph.

"(3) ALLOWANCE OF DEDUCTION.—The ordinary income portion of a lump sum distribution for the taxable year shall be allowed as a deduction from gross income for such taxable year, but only to the extent included in the taxpayer's gross income for such taxable year.

"(4) DEFINITIONS AND SPECIAL RULES.—

"(A) LUMP SUM DISTRIBUTION.—For purposes of this section and section 403, the term 'lump sum distribution' means the distribution or payment within one taxable year of the recipient of the balance to the credit of an employee which becomes payable to the recipient—

"(i) on account of the employee's death,

"(ii) after the employee attains age 59½,

"(iii) on account of the employee's separation from the service, or

"(iv) after the employee has become disabled (within the meaning of section 72 (m) (7))

from a trust which forms a part of a plan described

in section 401 (a) and which is exempt from tax under section 501 or from a plan described in section 403 (a) (2). Clause (iii) of this subparagraph shall be applied only with respect to an individual who is an employee without regard to section 401 (c) (1), and clause (iv) shall be applied only with respect to an employee within the meaning of section 401 (c) (1). For purposes of this subparagraph, a distribution of an annuity contract from a trust or annuity plan referred to in the first sentence of this subparagraph shall be treated as a lump sum distribution.

"(B) ELECTION OF LUMP SUM TREATMENT.—For purposes of this section and section 403, no amount which is not an annuity contract may be treated as a lump sum distributed under subparagraph (A) unless the taxpayer elects for the taxable year to have all such amounts received during such year so treated at the time and in the manner provided under regulations prescribed by the Secretary or his delegate. Not more than one election may be made under this subparagraph with respect to any individual after such individual has attained age 59½. No election may be made under this subparagraph by any taxpayer other than an individual, an

estate, or a trust. The preceding sentence shall apply to a trust in the case of any distribution only if—

"(i) the trust is the sole recipient of the entire balance to the credit of the employee under subparagraph (A), and

"(ii) the use of the trust device does not affect the includibility of the distribution in the gross estate of the employee.

"(C) AGGREGATION OF CERTAIN TRUSTS AND PLANS.—For purposes of determining the balance to the credit of an employee under subparagraph (A)—

"(i) all trusts which are part of a plan shall be treated as a single trust, all pension plans maintained by the employer shall be treated as a single plan, all profit-sharing plans maintained by the employer shall be treated as a single plan, and all stock bonus plans maintained by the employer shall be treated as a single plan, and

"(ii) trusts which are not qualified trusts under section 401(a) and annuity contracts which do not satisfy the requirements of section 404(a)(2) shall not be taken into account.

"(D) TOTAL TAXABLE AMOUNT.—For pur-

poses of this section and section 403, the term 'total taxable amount' means, with respect to a lump sum distribution, the amount of such distribution which exceeds the sum of—

"(i) the amounts considered contributed by the employee (determined by applying section 72 (f)), which employee contributions shall be reduced by any amounts theretofore distributed to him which were not includible in gross income, and

"(ii) the net unrealized appreciation attributable to that part of the distribution which consists of the securities of the employer corporation so distributed.

"(E) ORDINARY INCOME PORTION.—For purposes of this section, the term 'ordinary income portion' means, with respect to a lump sum distribution, so much the total taxable amount of such distribution as is equal to the product of such total taxable amount multiplied by a fraction—

"(i) the numerator of which is the number of calendar years of active participation by the employee in such plan after December 31, 1973, and

"(ii) the denominator of which is the

number of calendar years of active participation by the employee in such plan.

"(F) EMPLOYEE.—For purposes of this subsection and subsection (a) (2), except as otherwise provided in subparagraph (A), the term 'employee' includes an individual who is an employee within the meaning of section 401 (c) (1) and the employer of such individual is the person treated as his employer under section 401 (c) (4).

"(G) COMMUNITY PROPERTY LAWS.—The provisions of this subsection, other than paragraph (3), shall be applied without regard to the community property laws of any State.

"(H) MINIMUM PERIOD OF SERVICE.—This subsection shall apply to amounts distributed to an employee from or under a plan only if he has been a participant in the plan for 5 or more taxable years before the taxable year in which such amounts are distributed.

"(I) AMOUNTS SUBJECT TO PENALTY.—This subsection shall not apply to amounts described in clause (ii) of subparagraph (A) of section 72 (m) (5) to the extent that section 72 (m) (5) applies to such amounts.

"(J) UNREALIZED APPRECIATION OF EM-

PLOYER SECURITIES.—In the case of a lump sum distribution including securities of the employer corporation, the amount of net unrealized appreciation of such securities and the resulting adjustments to the basis of such securities shall be determined under regulations prescribed by the Secretary or his delegate.

"(K) SECURITIES.—For purposes of this subsection, the terms 'securities' and 'securities of the employer corporation' have the respective meanings provided by subsection (a) (3)."

(b) PHASEOUT OF CAPITAL GAINS TREATMENT.—

(1) IN GENERAL.—Section 402 (a) (2) (relating to capital gains treatment for certain distributions) is amended to read as follows:

"(2) CAPITAL GAINS TREATMENT FOR PORTION OF LUMP SUM DISTRIBUTIONS.—In the case of an employee trust described in section 401 (a), which is exempt from tax under section 501 (a), so much of the total taxable amount (as defined in subparagraph (D) of subsection (e) (4)) of a lump sum distribution as is equal to the product of such total taxable amount multiplied by a fraction—

"(A) the numerator of which is the number of calendar years of active participation by the em-

ployee in such plan before January 1, 1974, and

"(B) the denominator of which is the number of calendar years of active participation by the employee in such plan,

shall be treated as a gain from the sale or exchange of a capital asset held for more than 6 months. For purposes of computing the fraction under this paragraph, the Secretary or his delegate may prescribe regulations under which plan years may be used in lieu of calendar years."

(2) AMENDMENT OF SECTION 403.—That part of paragraph (2)(A) of section 403(a) which follows clause (ii) thereof is amended to read as follows:

"(iii) a lump sum distribution (as defined in section 402(e)(4)(A)) is paid to the recipient,

so much of the total taxable amount (as defined in section 402(e)(4)(D)) of such distribution as is equal to the product of such total taxable amount multiplied by the fraction described in section 402(a)(2) shall be treated as a gain from the sale or exchange of a capital asset held for more than 6 months.

"(B) CROSS-REFERENCE.—

"For imposition of separate tax on ordinary income portion of lump sum distribution, see section 402(e).".

(c) CONFORMING AMENDMENTS.—

(1) Subparagraph (C) of section 402 (a) (3) is repealed.

(2) Paragraph (5) (as in effect on December 31, 1973) of section 402 (a) is repealed.

(3) Section 72 is amended by striking out subsection (n) thereof and by redesignating subsections (o) and (p) as (n) and (o), respectively.

(4) The second sentence of section 46 (a) (3) and the second sentence of section 50A (a) (3) are each amended by inserting "section 402 (e) (relating to tax on lump sum distributions)," before "section 408 (f)".

(5) The third sentence of section 901 (a) is amended by inserting "against the tax imposed by section 402 (e) (relating to tax on lump sum distributions)," before "against the tax imposed by section 408 (f)".

(6) Subsection 1304 (b) (relating to special rules) is amended by striking out paragraph (2) and by redesignating paragraphs (3), (4), (5), and (6) as paragraphs (2), (3), (4), and (5), respectively.

(7) Subparagraph (A) of section 56 (a) (2) and paragraph (1) of section 56 (c) are each amended by inserting before "408 (f)" the following: "402 (e),".

(8) Sections 871 (b) (1) and 877 (b) are each amended by inserting ", 402 (e) (1)," after "section 1".

(9) Section 62 (defining adjusted gross income) is amended by inserting after paragraph (10) the following new paragraph:

"(11) CERTAIN PORTION OF LUMP-SUM DISTRIBUTIONS FROM PENSION PLANS TAXED UNDER SECTION 402(e).—The deduction allowed by section 402 (e) (3)."

(10) Section 122 (b) (2) (relating to consideration for the contract) is amended by striking out "72 (o)" and inserting "72 (n)".

(11) Section 405 (e) (relating to capital gains treatment and limitation of tax not to apply to bonds distributed by trusts) is amended by striking out "Section 72 (n) and section 402 (a) (2)" and inserting "Subsections (a) (2) and (e) of section 402".

(12) Section 406 (c) (relating to termination of status as deemed employee, etc.) is amended by striking out "section 72 (n), section 402 (a) (2)" and inserting "subsections (a) (2) and (e) of section 402".

(13) Section 407 (c) (relating to termination of status as deemed employee, etc.) is amended by striking out "section 72 (n), section 402 (a) (2)" and inserting "subsections (a) (2) and (e) of section 402".

(14) Section 1348(b)(1) (relating to earned income) is amended by striking out "72(n), 402(a)(2)" and inserting "402(a)(2), 402(e)".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply only with respect to distributions or payments made after December 31, 1973, in taxable years beginning after such date.

SEC. 2005. SALARY REDUCTION REGULATIONS.

(a) NO REGULATIONS TO TAKE EFFECT BEFORE MARCH 16, 1975.—

(1) The Secretary of the Treasury is hereby directed to withdraw the proposed salary reduction regulations (37 Fed. Reg. 25938).

(2) On or before December 31, 1974, no other proposed salary reduction regulations may be issued.

(3) On or before March 15, 1975, no salary reduction regulations may be issued in final form.

(4) Until salary reduction regulations have been issued in final form, the law shall be administered—

(A) without regard to the proposed salary reduction regulations described in paragraph (1) and without regard to any other proposed salary reduction regulations, and

(B) in the manner such law was administered before January 1, 1972.

(b) Administration in the Case of Qualified Profit-Sharing Plans.—In applying subsection (a) (4) to the tax treatment of contributions to qualified profit-sharing plans where the contributed amounts are distributable only after a period of deferral, the law shall be administered in a manner consistent with the following revenue rulings:

(1) Revenue Ruling 56–497 (1956—2 C.B. 284),

(2) Revenue Ruling 63–180 (1963—2 C.B. 189), and

(3) Revenue Ruling 68–89 (1968—1 C.B. 402).

(c) Limitation on Retroactivity of Final Regulations.—In the case of any salary reduction regulations which become final after March 15, 1975—

(1) for purposes of chapter 1 of the Internal Revenue Code of 1954, such regulations shall not take effect before January 1, 1975; and

(2) for purposes of chapter 21 of such Code (relating to Federal Insurance Contributions Act) and for purposes of chapter 24 of such Code (relating to withholding of income tax at sources), such regulations shall not take effect before the day on which such regulations are issued in final form.

(d) Salary Reduction Regulations Defined.—For purposes of this section, the term "salary reduction regulations" means regulations dealing with the includibility in

gross income (at the time of contribution) of amounts contributed to pension, etc., plans.

SEC. 2006. RULES FOR CERTAIN NEGOTIATED PLANS.

(a) TREATMENT OF CERTAIN PARTICIPANTS IN THE PLAN.—Section 404(c) (relating to certain negotiated plans) is amended by inserting after the first sentence the following new sentences: "For purposes of this chapter and subtitle B, in the case of any individual who before July 1, 1974, was a participant in a plan described in the preceding sentence—

"(A) such individual, if he is or was an employee within the meaning of section 401(c)(1), shall be treated (with respect to service covered by the plan) as being an employee other than an employee within the meaning of section 401(c)(1) and as being an employee of a participating employer under the plan,

"(B) earnings derived from service covered by the plan shall be treated as not being earned income within the meaning of section 401(c)(2), and

"(C) such individual shall be treated as an employee of a participating employer under the plan with respect to service before July 1, 1975, covered by the plan.

Section 277 (relating to deductions incurred by certain mem-

bership organizations in transactions with members) shall not apply to any trust described in this subsection.".

(b) OTHER AMENDMENTS TO SECTION 404(c)(1).—

(1) Paragraph (1) of the first sentence of section 404(c) is amended by striking out "and pensions" and inserting in lieu thereof "or pensions".

(2) The last sentence of section 404(c) is amended by striking out "This subsection" and inserting in lieu thereof "The first and third sentences of this subsection".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending on or after June 30, 1972.

93D CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPORT
No. 93-807

PRIVATE PENSION TAX REFORM

REPORT

OF THE

COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES

TOGETHER WITH SUPPLEMENTAL VIEWS

ON

H.R. 12855

FEBRUARY 21, 1974.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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93d Congress } HOUSE OF REPRESENTATIVES { Report
2d Session } { No. 93-807

PRIVATE PENSION TAX REFORM

February 21, 1974.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. Ullman, from the Committee on Ways and Means, submitted the following

REPORT

together with

SUPPLEMENTAL VIEWS

[To accompany H.R. 12855]

The Committee on Ways and Means, to whom was referred the bill (H.R. 12855), to amend the Internal Revenue Code of 1954 to provide pension reform, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

I. INTRODUCTION AND SUMMARY

H.R. 12855, as reported by the Committee on Ways and Means, deals with the tax aspects of making pension, profit sharing, and stock bonus plans fairer and more effective in providing retirement income for employees who have spent their careers in useful and socially productive work.

Your committee, in reporting this bill, anticipates that it will, in the House action, become a part of a broader bill dealing with retirement plans generally. It is expected that this bill will be combined with H.R. 12906, to be reported by the Committee on Education and Labor. This bill and the bill reported by the Committee on Education and Labor, are expected to jointly deal with participation, vesting, and funding with respect to pension plans. In these areas, this bill has been worked out in close coordination with the version of the bill expected from the Committee on Education and Labor to be sure that the general standards provided in these three areas are the same. Because of the expected coordination between your committee's bill and that of the Education and Labor Committee, no action is taken in this bill to deal with the general subjects of fiduciary standards, plan termination insurance, and reporting and disclosure, which are dealt with in H.R. 12906.

This bill deals only with qualified plans and provides for enforcement with respect to retirement plans through the Internal Revenue

Service, while the bill from the Committee on Education and Labor is expected to deal with both qualified and nonqualified plans and provide for enforcement through the Department of Labor. Because of the coordination and effort involved, it is not expected that this dual jurisdiction in these three areas will present problems. Not only have the standards in the two bills been coordinated, but also provisions have been made for joint regulations in areas where problems might otherwise arise.

In the areas of participation, vesting, and funding it is important for the Committee on Ways and Means to have a part in setting the standards involved since for plans qualifying under these standards there are significant tax advantages. At the same time, guidelines established for retirement plans also are of significance to a committee charged with the jurisdiction of labor laws. Although provision is made for dual enforcement in these two areas by the Internal Revenue Service and the Department of Labor, it is anticipated that these agencies will coordinate their efforts so as not to duplicate enforcement efforts.

This bill encourages provisions for the retirement needs of many millions of individuals. At the same time, the committee recognizes that private retirement plans are voluntary on the part of employers, and, therefore, it has weighed carefully the additional costs to the employers and minimized these costs to the extent consistent with minimum standards for retirement benefits.

In broad outline, the bill is designed—

(1) to increase the number of individuals participating in retirement plans;

(2) to make sure that those who do participate in such plans do not lose their benefits as a result of unduly restrictive forfeiture provisions or failure of the plan to accumulate and retain sufficient funds to meet its obligations; and

(3) to make the tax laws relating to such plans fairer by providing greater equality of treatment under such plans for the different taxpaying groups involved.

This bill also goes a long way toward equalizing the tax treatment of those in different lines of work. In the case of the self-employed, it makes a threefold increase in the deductible amount which can be set aside for retirement. At the same time, it provides limits on the contributions or benefits for individuals covered by qualified plans. The bill also provides deductions for a modest retirement savings set-aside for those who are not covered by any existing plans.

The bill continues to rely primarily on the tax laws to secure needed improvements in pension and related plans. In general, it retains the tax incentives granted under present law for the purpose of encouraging the establishment of plans which contain socially desirable provisions. However, it also improves the effectiveness of these tax incentives by extending or increasing them in certain cases where this is warranted and by pruning them where they have given rise to problems.

Present tax treatment of qualified plans

Present law encourages employers to establish retirement plans for their employees by granting favorable tax treatment where plans qual-

ify by meeting nondiscrimination and other rules set forth in the Internal Revenue Code. Such qualified plans must cover a specified percentage of employees or cover employees under a classification found by the Internal Revenue Service not to discriminate in favor of employees who are officers, shareholders, supervisory employees, or highly compensated employees. Similarly, the contributions to such plans or the benefits paid out by them cannot discriminate in favor of such employees.

The favorable tax treatment granted qualified plans is substantial. Employers, within certain limits, are permitted to deduct contributions made to these plans for covered employees whether or not their interests are vested; earnings on the plan's assets are exempt from tax; and covered employees defer payment of tax on employer contributions made on their behalf until they actually receive the benefits, generally after retirement when their incomes and hence applicable tax rates tend to be lower.

The private pension system has shown substantial development under the present tax rules. Estimates of the coverage of private pension plans range from 23 million to 30 million employees for 1972 and 42 million employees are expected to be covered by 1980 without any change in law. Similarly, in 1970 about $14 billion was contributed to pension plans by employees and employers and 4.7 million beneficiaries received $7.4 billion in pension payments. Moreover, pension plan assets amounted to $150 billion (book value) in 1972 and are expected to reach $225 billion by 1980.

Problem areas

While the achievements of private retirement plans are substantial, a number of serious problems have become apparent. Those dealt with by this bill can be briefly outlined as follows:

Inadequate coverage.—Despite the rapid growth in pension coverage, about one-half of all employees in private nonagricultural employment are still not covered. Moreover, many plans have overly restrictive age and service requirements for participation, resulting in the exclusion of many employees.

Inadequate vesting.—Present law generally does not require an employee plan to give a covered employee vested rights to benefits—that is, the right to receive benefits if he leaves or loses his job before retirement age. Many private pension plans do provide vested rights to benefits before retirement, but as a general rule, employees do not acquire vested rights until they have served a fairly long time with the firm and/or are relatively mature. As a result, even employees with substantial periods of service may not acquire rights to pension benefits upon separation from employment.

Inadequate funding.—A significant number of pension plans are not adequately funded—that is, they are not accumulating sufficient assets to pay benefits in the future to covered employees. Under the present minimum funding requirements, contributions to qualified plans must be at least large enough to pay the normal costs (the pension liabilities created in the current year) plus the interest on unfunded accrued liabilities attributable to the past service of the covered employees. However, this minimum funding requirement is

not adequate because it does not require the unfunded accrued liabilities for past service to be amortized.

Discrimination against individuals not covered by pension plans.—Individuals who are outside of qualified pension plans have no opportunity to set aside income for their own retirement under the favorable tax treatment accorded to individuals covered by such plans. These individuals must save for their retirement from income after tax and must pay tax currently on the income earned by their retirement savings.

Unjustifiable differences in tax treatment of corporate owner-employees and self-employed individuals under qualified plans.—At present, in practice there is almost no practical limit on the amount of pension contributions that corporations can make to qualified plans on behalf of corporate employees. This has resulted in abuse situations in which extremely large pension benefits have been financed for corporate employees in part at the expense of the general taxpaying public, as a result of the favorable tax treatment that is accorded.

The fact that pension contributions on behalf of corporate employees are in practice not subject to control has also given rise to claims of discrimination on the part of self-employed persons. Pension contributions made by self-employed persons on their own behalf are limited to 10 percent of earned income up to $2,500 a year under present law. These limits also have had the undesirable effect of inducing many individuals, including professional people, who would normally carry on their activities as sole proprietors or partners, to convert their activities to the corporate form almost entirely to secure the greater tax advantages associated with corporate plans.

Provisions of the bill

The bill deals with these problems in many different ways. The principal provisions of the bill are summarized below.

1. *Minimum Participation Standards.*—Generally, an employee cannot be excluded from a plan on account of age or service if the employee is at least 25 years old and has had at least one year of service. The one-year of service requirement may be extended to 3 years if immediate vesting is provided.

2. *Minimum Vesting Standards.*—Three alternative minimum vesting standards are provided. The first of these provides for at least 25 percent vesting at the end of the fifth year of covered service. Thereafter the vesting percentage is increased by 5 percent a year until a level of 50 percent is reached at the end of the tenth year. Following this, vesting increases at the rate of 10 percent a year until 100 percent vesting is reached at the end of the 15th year.

The second vesting standard under the bill is 100 percent vesting at the end of ten years of covered service.

The third vesting standard is the so-called rule of 45. Under this standard, there must be 50 percent vesting when the sum of the age of the individual and the number of years of covered service equal 45 (provided there is at least 5 years of service). An additional 10 per-

cent per year is then required to be vested in each of the next 5 years of service.

These vesting rules are phased in over a five-year period beginning, in the case of existing plans, in 1976.

3. *Minimum Funding Standards.*—Normal costs are to be funded currently. Costs attributable to already-existing liabilities are to be amortized over a 40-year period. Liabilities under plan amendments and new plans generally are to be amortized over a 30-year period, except that in the case of multiemployer plans the amortization period is to be 40 years (in this latter case the Secretary of Labor can extend this for a further period of 10 years). Experience gains and losses are to be amortized over 15 years generally, but in the case of multiemployer plans over a period of 20 years (in this last case the period can be extended an additional ten years by the Secretary of Labor). These experience gains and losses generally will only be required to be recomputed every three years. The above funding standards are based upon accrued liabilities.

If funding requirements are higher under a second general standard which is based on accrued "vested" liabilities, this standard is to apply in lieu of the rules set forth above. Under this standard, accrued vested liabilities are determined, as also are the value of the plan's assets. Where the former exceeds the latter, the contribution for that year must be sufficient to cover the level annual payment required to amortize the difference in 20 years. A determination for a new 20-year amortization period is made in each of the succeeding years.

Where any of the requirements set forth above present hardship under a plan (and certain standards are met), the Secretary of the Treasury can permit variances spreading the current liability in this case over a 15-year period.

4. *Special Variance for Multiemployer Plans.*—In the case of multiemployer plans where the Secretary of Labor finds that the vesting and funding provisions seriously endanger the continuation of a plan, he can authorize exceptions to the vesting and funding standards described above.

5. *Government Plans.*—The participation, vesting, and funding standards set forth above do not apply in the case of governmental plans. In the case of these plans, the same standards continue to apply as under present law. Studies are to be made by the Ways and Means Committee and the Education and Labor Committee as to the need for change in these areas in the future.

6. *Joint and Survivor Annuities.*—Qualified plans in the future that provide annuities are to provide for them as joint and survivor annuities (if the participant and his spouse have been married throughout the 5-year period ending on the annuity starting date) unless the employee elects out of such treatment.

7. *Effective Dates for Participation, Vesting, and Funding.*—Generally the participation, vesting, and funding provisions in the case of existing plans are to be effective as of January 1, 1976. In the case of new plans adopted after January 1, 1974, however, the participation, vesting, and funding provisions are to be effective as of the date

of enactment. In the case of collective bargaining plans, the January 1, 1976, date is to be extended to January 1, 1977, or the expiration date of the current collective bargaining agreement (but not beyond January 1, 1981).

8. *Federal Procurement Contracts.*—In the case of employees working under contracts relating to federal procurement, construction, or research, the Secretary of Labor is directed to make a study as to procedures to encourage special provisions for engineers and others similarly situated who tend to change from one job to another, in order to provide them with more immediate vesting than is true in the case of employees generally. The study in this case is to be completed in a two-year period and regulations carrying out the study are to be put into effect at the end of the next year unless either House of the Congress within 90 days after the receipt of such proposed regulations votes against these regulations.

9. *Duties of Secretary of Health, Education, and Welfare.*—Whenever employees with vested rights leave their employment (prior to retirement), a statement as to their vested rights is to be given them by their employer. A copy of this statement is also to be transmitted through the Treasury Department to the Secretary of HEW. The Secretary of HEW will then inform the employee when he applies for social security benefits as to any statements of this type which an employer has given HEW. The department is not to be responsible for the accuracy of any such statements.

10. *Plan Termination Insurance and the Rules Relating to Fiduciaries.*—Although a program of plan termination insurance to protect the rights of covered employees is desirable, this bill makes no provision for such a program. Also, no change is made in this bill to tighten the rules relating to fiduciaries of qualified retirement plans which would also be desirable. This is because H.R. 12905, which is to be reported by the House Committee on Education and Labor, provides for a program of plan termination insurance and also provides for additional rules regarding fiduciary requirements which are designed to correct any existing abuses.

11. *Tax Court Procedure.*—Provision is made in the bill for the appeal from the determination of the Internal Revenue Service as to the initial qualification of pension plans or the effects of amendments proposed to pension plans. This is to be dealt with by a declaratory judgment procedure in the U.S. Tax Court.

12. *Establishment of Office of Assistant Commissioner.*—Provision is made for the establishment in the Internal Revenue Service of an office of Assistant Commissioner of Pensions and Exempt Organizations. This office is to provide a centralized group for unifying the tax treatment of pension plans throughout the country. Authorization is made for funds in the case of this office.

13. *Contributions on Behalf of Self-Employed Individuals.*—The limitations on deductions for self-employed individuals are to be increased from 10 percent of their self-employment income, not to exceed $2,500 up to 15 percent of their self-employment income, not to

exceed \$7,500. A minimum of \$750 may be deducted in these cases without regard to the percentage limitation.

14. *Individual Retirement Accounts.*—Individuals not covered by qualified or government pension plans are to be permitted to take a deduction of up to 20 percent of their earned income not to exceed \$1,500. This amount may be set aside in a special custodial account with a bank, savings and loan, credit union, life insurance company or regulated investment company without tax consequences on the earnings on the balance in this account until such time as the individual draws down the amount. This amount cannot be drawn down without penalty before age 59½ (except in the case of death or disability) and the individual must begin drawing the amount down by age 70½ if penalty is to be avoided. An individual may establish the account directly himself or, alternatively, an employer or labor union may maintain accounts of this type for employees or members.

15. *Limitations on Benefits and Contributions.*—In the case of defined contribution plans (profit-sharing and money purchase pension plans), there may not be set aside with respect to an individual in a qualified plan in any year more than 25 percent of his compensation or \$25,000, whichever is the lesser.

In the case of defined benefit plans, the pension which may be paid with respect to any individual may not exceed 100 percent of his compensation in his high three years of employment or \$75,000, whichever is the lesser. (Both the \$25,000 amount and the \$75,000 amount referred to above are subject to cost-of-living allowances.) A "grandfather clause" provides that if an individual is eligible for more than a \$75,000 pension based upon his current compensation by taking into account his additional period of employment up to the time of his expected retirement, this amount may be paid despite the \$75,000 limitation.

If an employee is under both a defined benefit plan and a defined contribution plan, then an overall limit is applied to coordinate the two limits discussed above. In this case, the sum of (1) the percentage utilization of the maximum limit under the defined benefit plan and (2) the percentage utilization of the maximum limit under the defined contribution plan cannot exceed 140 percent. Amounts in excess of these limits may be provided under the plan, but may not be paid out of a qualified trust.

16. *Lump Sum Distributions.*—Lump sum distributions from qualified plans are to be treated as ordinary income subject to special 10-year averaging. This treatment is to apply to the post-1973 portion of such a distribution, with regular capital gain treatment available to the remaining portion (pre-1974) of the distribution. The distribution is to be apportioned between the income averaging part and the capital gains part on the basis of the employee's years of active participation in the plan after 1973 and his years before 1974.

17. *Salary Reduction Plans and Cash-or-Deferred-Profit-Sharing-Plans.*—Determination of the inclusion of income to an employee in

the case of a salary reduction plan or a cash-or-deferred-profit-sharing plan is to be made on the basis of the way it would have been made before the Internal Revenue Service began the preparation of proposed regulations to change its administrative practices in this area. Those proposed regulations are to be withdrawn and no new regulations on this matter may be finally issued until after March 15, 1975.

18. *Revenue Effects.*—The tax provisions affecting retirement plans, which are in this bill, when fully effective, will result in an estimated net revenue loss of $460 million a year. An estimated revenue loss of $530 million a year is attributable to the provisions allowing individuals not covered by qualified plans to establish their own individual retirement plans and to the higher deduction limits for contributions by self employed people to H.R. 10 pension plans. This is offset by an estimated $70 million revenue gain attributable to the new tax treatment of lump sum distributions from qualified plans, and the provisions limiting contributions or benefits to qualified plans on behalf on any individual.

II. REASONS FOR THE BILL

One of the most important matters of public policy facing the nation today is how to assure that individuals who have spent their careers in useful and socially productive work will have adequate incomes to meet their needs when they retire. This legislation is concerned with improving the fairness and effectiveness of qualified retirement plans in their vital role of providing retirement income. In broad outline, the objective is to increase the number of individuals participating in employer-financed plans; to make sure to the greatest extent possible that those who do participate in such plans actually receive benefits and do not lose their benefits as a result of unduly restrictive forfeiture provisions or failure of the pension plan to accumulate and retain sufficient funds to meet its obligations; and to make the tax laws relating to qualified retirement plans fairer by providing greater equality of treatment under such plans for the different taxpayer groups concerned.

Essentially, your committee's bill represents a significant improvement in the tax treatment now applicable with respect to qualified retirement plans. Your committee regards the present legislation as part of an evolutionary process which keeps this basic framework but which builds on it new provisions which experience indicates are necessary for the proper functioning of these plans.

A fundamental aspect of present law, which the committee bill continues, is reliance on voluntary action by employers (and employees under contributory plans) for the establishment of qualified retirement plans. The committee bill also continues the approach in present law of encouraging the establishment of retirement plans which contain socially desirable provisions through the granting of tax induce-

ments. In other words, under the new legislation as under the present law, no one is compelled to establish a retirement plan. However, if a retirement plan is to qualify for the favorable tax treatment, it will be required to comply with specified new requirements which are designed to improve the retirement system. Since the favorable tax treatment is quite substantial, presently involving a revenue loss of over $4 billion a year, it is anticipated that plans will have a strong inducement to comply with the new qualification rules and thereby become more effective in fulfilling their objective of providing retirement income.

The tax advantages associated with qualification under the Internal Revenue Code are substantial. Employers, within certain limits, are permitted to deduct contributions made to such plans on behalf of covered employees, whether or not the interests of covered employees are vested; earnings on the plan's assets are exempt from tax; and covered employees defer payment of tax on employer contributions made on their behalf until they actually receive the benefits, generally after retirement when their incomes and hence applicable tax rates tend to be lower.

THE ENCOURAGEMENT OF NONDISCRIMINATORY PLANS UNDER PRESENT LAW

As already indicated, our tax laws now provide substanital tax incentives for the establishment of nondiscriminatory retirement plans. In order to qualify as nondiscriminatory, a retirement plan must cover a specified percentage of employees [1] or cover employees under a classification found by the Internal Revenue Service not to discriminate in favor of employees who are officers, shareholders, supervisory employees, or highly compensated employees. Similarly, either the contributions to the plan or the benefits paid out by the plan must not discriminate in favor of officers, etc.

In adopting this legislation, your committee is aware of the achievements of the private pension system under the 1942 legislation. The private retirement system has grown rapidly over the past three decades. While the precise coverage of retirement plans is not known, estimates of the number of employees now covered by such plans range from 23 million to 30 million.[2] This compares with coverage of 4 million in 1940 and 9.8 million in 1950. (See Table 1.) By 1980, these retirement plans are expected to cover 42 million employees.[3]

[1] To qualify on this basis, the plan must cover 70 percent or more of all the employees, or 80 percent or more of all employees who are eligible to benefit under the plan if 70 percent or more of all the employees are so eligible, excluding in each case employees who have been employed not more than a minimum period prescribed by the plan, not exceeding 5 years, employees whose customary employment is for not more than 20 hours in any 1 week, and employees whose customary employment is for not more than 5 months in any calendar year (sec. 401(a)(3)(A)).

[2] Department of Health, Education and Welfare, Department of Labor and Treasury Department, Coverage and Vesting of Full-Time Employees under Private Retirement Plans; Findings from the April 1972 Survey, BLS Report No. 423, Sept. 1973.

[3] Public Policy and Private Pension Programs, A Report to the President on Private Employees Retirement Plans by the President's Committee on Corporate Pension Funds and Other Private Retirement and Welfare Programs, January 1965, p. vi.

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TABLE 1.—PRIVATE PENSION AND DEFERRED PROFIT-SHARING PLANS: [1] ESTIMATED COVERAGE, CONTRIBUTIONS, BENEFICIARIES, BENEFIT PAYMENTS, AND RESERVES, 1950, 1955, 1960–70

Year	Coverage [2] end of year (in thousands)			Employer contributions (in millions)			Employee contributions (in millions)			Number of beneficiaries, end of year (in thousands)			Amount of benefit payments (in millions)			Reserves, end of year (in billions)		
	Total	Insured	Noninsured	Total	Insured	Noninsured	Total	Insured	Noninsured	Total	Insured	Noninsured	Total [3]	Insured	Noninsured [3]	Total	Insured	Noninsured
1950	9,800	2,600	7,200	$1,750	$720	$1,030	$330	$200	$130	450	150	300	$370	$80	$290	$12.1	$5.6	$6.5
1955	15,400	3,800	11,600	3,280	1,100	2,180	560	280	280	980	290	690	850	180	670	27.5	11.3	16.1
1960	21,200	4,900	16,300	4,710	1,190	3,520	780	300	480	1,780	540	1,240	1,720	390	1,330	52.0	18.8	33.1
1961	22,200	5,100	17,100	4,830	1,180	3,650	780	290	490	1,910	570	1,340	1,970	450	1,520	57.8	20.2	37.5
1962	23,100	5,200	17,900	5,200	1,240	3,960	830	310	520	2,100	630	1,470	2,330	510	1,820	63.5	21.6	41.9
1963	23,800	5,400	18,400	5,560	1,390	4,170	860	300	560	2,280	690	1,590	2,590	570	2,020	69.9	23.3	46.6
1964	24,600	6,000	18,600	6,370	1,520	4,850	910	310	600	2,490	740	1,750	2,990	640	2,350	77.7	25.2	52.4
1965	25,300	6,200	19,100	7,370	1,770	5,600	990	320	670	2,750	790	1,960	3,520	720	2,800	86.5	27.3	59.2
1966	26,300	6,900	19,400	8,210	1,850	6,360	1,040	330	710	3,110	870	2,240	4,190	810	3,380	95.5	29.3	66.2
1967	27,500	7,700	19,800	9,050	2,010	7,040	1,130	340	790	3,410	930	2,480	4,790	910	3,880	106.2	31.9	74.2
1968	28,000	7,900	20,100	9,940	2,240	7,700	1,230	340	890	3,770	1,010	2,760	5,530	1,030	4,500	117.8	34.8	83.1
1969	29,000	8,700	20,300	11,520	3,030	8,490	1,360	350	1,010	4,180	1,070	3,110	6,450	1,160	5,290	127.8	37.2	90.6
1970	[4] 29,700	9,300	20,400	12,580	2,860	9,720	1,420	350	1,070	4,720	1,220	3,500	7,360	1,330	6,030	137.1	40.1	97.0

[1] Includes pay-as-you-go, multi-employer, and union-administered plans those of nonprofit organizations, and railroad plans supplementing the Federal railroad retirement program. Excludes pension plans for Federal, State, and local government employees as well as pension plans for the self-employed. Insured plans are underwritten by insurance companies; noninsured plans are, in general, funded through trustees.

[2] Excludes annuitants; employees under both insured and noninsured plans are included only once—under the insured plans.

[3] Includes refunds to employees and their survivors and lump-sums paid under deferred profit-sharing plans.

[4] Coverage for 1972 is estimated at 23,000,000 in Coverage and Vesting of Full-Time Employees under Private Retirement Plans: Findings from the April 1972 survey by the Departments of Health, Education, and Welfare and Labor. See BLS Rept. No. 42–3, September 1973. To the extent that this, 23,000,000 coverage figure is correct, the estimates of coverage shown in the above table are too high. Nonetheless, the coverage figures in the table may still be useful in giving an approximation of the relative increase in coverage over the past 2 decades or so.

Source: Compiled by the Office of the Actuary, Social Security Administration, from data furnished primarily by the Institute of Life Insurance and the Securities and Exchange Commission.

The growth which has occurred is also evidenced in other ways. Between 1950 and 1970, total annual contributions made to retirement plans by employees and employers rose from about $2.1 billion to about $14 billion. In 1950, 450,000 beneficiaries received $370 million from retirement plans; in 1970, 4.7 million beneficiaries received $7.4 billion in pension payments. Moreover, retirement plan assets soared from $12.1 billion in 1940 to $150 billion in 1972 (book value) and are expected to reach $225 billion by 1980.[4]

PROBLEM AREAS

Despite the substantial achievements of retirement plans, it has become apparent that a number of problems have arisen which prevent many of these plans from achieving their full potential as a source for retirement income. These problem areas are outlined below.

Inadequate coverage.—Despite the rapid growth in retirement plan coverage in recent years to its 1970 level of from 23 to 30 million employees, somewhere in the vicinity of one-half of all employees in private, nonagricultural employment are still not covered by retirement plans. Retirement plans are still relatively rare among small business firms and in agriculture. Moreover, even where employees work for a firm with a retirement plan, the age and service requirements for participation in the plan may be overly restrictive, excluding many employees.

Discrimination against the self-employed and employees not covered by retirement plans.—Another problem area is that present law discriminates against employees not covered by retirement plans and against the self-employed. This is primarily because the personal retirement savings of individuals not covered by pension plans must be made out of after-tax income, while those covered by retirement plans are permitted to defer tax on their employer's retirement contributions. In addition, the earnings on the retirement savings of noncovered persons are subject to tax as earned, while the tax on earnings of pension funds is deferred until paid out as a retirement benefit.

Self-employed people also frequently maintain that they are discriminated against as compared with corporate executives and owner-managers of corporations in regard to the tax treatment of retirement savings. At present, there is no comprehensive limit on the amounts the employer can contribute on behalf of corporate executives and owner-managers of corporations; similarly, there is no statutory limit on the amount of pension benefits that the latter can receive—so long as those contributions or benefits do not discriminate in favor of employees who are shareholders, officers, supervisors, or highly paid and do not constitute unreasonable compensation. As a result of legislation enacted in 1962 and amended in subsequent years, self-employed people can establish retirement plans for themselves and their employees but their deductible contributions to such plans on their own behalf are limited to 10 percent of earned income up to $2,500 a year.

Inadequate vesting.—Present law generally does not require a retirement plan to give a covered employee vested rights to benefits—

[4] Table 1 and Securities and Exchange Commission, Private Noninsured Pension Funds, 1972, and A Report to the President on Private Employee Retirement Plans, *op. cit.*

that is, the right to receive benefits even if he leaves or loses his job before retirement age.[5] Over two-thirds of the private retirement plans provide vested rights to retirement benefits before retirement. However, as a general rule, employees do not acquire vested rights until they have accumulated a fairly long period of service with the firm and/or are relatively mature.

At present, only one of every three employees participating in employer-financed plans has a 50 percent or greater vested right to his accrued retirement benefits. Moreover, 58 percent of covered employees between the ages of fifty and sixty and 54 percent of covered employees 60 years of age and over do not have a qualified vested right to even 50 percent of their accrued retirement benefits.[6] As a result, even employees with substantial periods of service may lose retirement benefits on separation from employment. Extreme cases have been noted in which employees have lost retirement rights at advanced ages as a result of being discharged shortly before they would be eligible to retire. In addition, failure to vest more rapidly is charged with interfering with the mobility of labor, to the detriment of the economy.

Inadequate funding.—Another problem area is that a significant portion of present pension plans are not adequately funded—that is they are not accumulating sufficient assets to pay benefits in the future to covered employees. As a result, there is concern that many employees now covered by pension plans may not actually receive pensions when they retire because the funds will not be available to pay for those pensions.

In general, pension plans that are qualified under the Internal Revenue Code must meet certain minimum funding requirements by irrevocably setting aside funds in a trust or through the purchase of insurance contracts. Contributions to such plans must generally be at least large enough to pay the normal pension costs plus the interest on unfunded accrued liabilities which generally are attributable to the past service of the covered employees. However, this minimum funding requirement is not adequate because it is designed only to prevent the unfunded liabilities from growing larger and does not require any payment to reduce the amount of the outstanding unfunded liabilities, which may be substantial.

The available evidence suggests that many pension plans are adequately funded—but that a significant proportion of the plans have not been adequately funded. This is indicated, for example, by a survey made by the Senate Labor Subcommittee of 469 trustee-administered pension plans covering 7.1 million employees. In 1970, about one-third of the plans in the study covering one-third of the participants reported a ratio of assets to total accrued liabilities of 50 percent or less; while 7 percent of the plans covering 8 percent of the participants reported a ratio of assets to accrued liabilities of 25 percent or less. (See Table 2.)

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[5] However, as noted below, vesting is required for employees under so-called H.R. 10 plans for owner-employees and may also be required in other cases to prevent the plan from having a discriminatory effect in operation, or upon plan termination or complete discontinuance of contributions.

[6] U.S. Treasury Department—Fact Sheet, Pension Reform Program, as reprinted in Material Relating to Administration Proposal Entitled the "Retirement Benefits Tax Act", Committee on Ways and Means, 93d Cong., 1st sess., p. 37, Table B.

TABLE 2.—FUNDING OF PRIVATE PENSION PLANS: ASSETS AT MARKET VALUE, AS PERCENT OF PRESENT VALUE [1] OF TOTAL ACCRUED RETIREMENT BENEFITS, BY PLAN AND BY PARTICIPANT: AS OF 1970

	By plan		By participant	
	Number [2]	Percent	Number	Percent
Assets as percent of accrued benefits:				
25 percent or less	33	7	541, 801	8
26 through 50	118	25	1, 798, 9[illegible]5	25
51 through 75	104	22	2, 134, 601	30
76 through 100	117	25	1, 211, 298	17
101 through 125	55	12	949, 975	13
126 through 150	20	4	134, 252	2
151 through 175	8	2	52, 498	1
Over 175	14	3	275, 835	4
Total	469	100	7, 100, 205	100

[1] Present value of accrued benefits is actuarially determined.
[2] Sample consists of 469 trustee-administered plans. Comparable data were not available for insured plans.

Note: The sum of individual items may not equal totals because of rounding.

Source: Senate Committee on Labor and Public Welfare Report on S. 3598, The Retirement Income Security for Employees Act of 1972, 92d Cong., 2d sess., p. 97.

In general, the older plans are better funded than the newer ones. Over one-half of the plans covered by the study which were 6 years old or less had an assets-liabilities ratio of 50 percent or less, while 35 percent of the plans in existence for 17 years to 21 years had such an assets-liabilities ratio.[7]

Loss of pension benefits due to plan terminations.—Concern has also been expressed over the possible loss of pension benefits as a result of termination of pension plans. The Studebaker case, which has been widely publicized, illustrates how pension benefits can be lost as a result of termination of a plan. When Studebaker closed its South Bend, Indiana, plant in 1964, the employees were separated and the pension plan was terminated. The plan provided fairly generous vested rights and the funding apparently would have been adequate had the firm remained in business and the plan continued in operation. However, at termination, the plan had not yet accumulated sufficient assets to meet all its obligations. As a result, full pension benefits were paid only to employees already retired and to employees age 60 or over with 10 years or more of service. Little or no benefits were paid to large numbers of other employees, many of whom had vested rights.

A joint study of the Treasury Department and the Department of Labor indicates that there were 1,227 plan terminations in 1972.[8] These terminations resulted in the loss of $49 million of benefits (present value) by 19,400 pension participants in 546 of the terminated plans. The average loss of benefits for participants amounted to $2,500. Participants losing benefits represented about eight one-hundredths of one percent of workers covered by pension plans. The data, of course, cover terminations occurring over a one-year period and may not be the typical experience.

Misuse of pension funds and disclosure of pension operations.—There also has been concern about the administration of pension plans. It has been charged that all too frequently pension funds have not been

[7] Senate Committee on Labor and Public Welfare report on S. 3598, The Retirement Income Security for Employees Act of 1972, 92d Cong., 2d sess., p. 98.
[8] Department of the Treasury and the Department of Labor Study of Pension Plan Terminations, 1972—Final Report, August 1973.

used in the best interest of covered employees. There have been cases of extreme misuse of pension funds.

The Welfare and Pension Plans Disclosure Act, which is administered by the Labor Department, was adopted in 1958 to protect the interests of welfare and pension plan participants and beneficiaries by requiring disclosure of information regarding such plans. This Act requires the plan administrators to file with the Secretary of Labor and to send to participants upon written request a description and annual report of the plain. The Act was amended in 1962 to make theft, embezzlement, bribery, and kickbacks Federal crimes where these occur in connection with welfare and pension plans. The 1962 amendment also conferred limited investigatory and regulatory powers upon the Secretary of Labor. However, abuses in the administration of pension plans and in the handling of pension funds have continued.

The Internal Revenue Code (sec. 503(b)) seeks to prevent abuses in the use of funds held under qualified retirement plans by prohibiting qualified trusteed plans from engaging in certain specified prohibited transactions such as lending funds without adequate security and a reasonable rate of interest to the creator of the plan, his family, or corporations controlled by him. Other prohibited transactions include payment of excessive salaries, purchase of property for more than an adequate consideration, sale of property for less than an adequate consideration, or any other transactions which result in a substantial diversion of funds to such individuals. Special additional rules apply to payment of excessive salaries, purchase of property for more than an trusts benefitting owner-employees.

OBJECTIVES OF THE MAIN PROVISIONS OF THE BILL

Although there have been significant legislative changes since the present basic framework of the tax laws relating to pensions was first adopted—principally in allowing self-employed people to establish retirement plans for themselves and their employees and in requiring the disclosure of information regarding welfare and pension plans—it has been more than 30 years since these basic pension provisions were first adopted. It is time for new legislation to conform the pension provisions to the present day situation and to provide remedial action for the various problems that have arisen in the retirement plan area during the past three decades.

As indicated above, the present provisions of the Internal Revenue Code provide tax inducements for the adoption of nondiscriminatory plans and to a limited extent other objectives. These nondiscrimination provisions are retained, but the new legislation also requires retirement plans to conform to additional requirements in order to qualify for the favorable tax treatment under the Internal Revenue Code. In taking this action, the committee has been mindful of the need to construct the new requirements so that they will provide meaningful improvement in the various problem areas noted under the present law. At the same time, the committee is aware that under our voluntary pension system, the cost of financing pension plans is an important factor in determining whether any particular retirement plan will be adopted and in determining the benefit levels if a plan is adopted, and that

unduly large increases in costs could impede the growth and improvement of the private retirement system. For this reason, in the case of those requirements which add to the cost of financing retirement plans, the committee has sought to adopt provisions which strike a balance between providing meaningful reform and keeping costs within reasonable limits.

Generally, it would appear that the wider or more comprehensive the coverage, vesting, and funding, the more desirable it is from the standpoint of national policy. However, since these plans are voluntary on the part of the employer and both the institution of new pension plans and increases in benefits depend upon employer willingness to establish or expand a plan, it is necessary to take into account additional costs from the standpoint of the employer. If employers respond to more comprehensive coverage, vesting and funding rules by decreasing benefits under existing plans or slowing the rate of formation of new plans, little if anything would be gained from the standpoint of securing broader use of employee pensions and related plans. At the same time, there are advantages in setting minimum standards in these areas both to serve as a guideline for employers in establishing or improving plans and also to prevent the promise of more in the form of pensions or related benefits than eventually is available.

Coverage.—One of the major objectives of the new legislation is to extend coverage under retirement plans more widely. For this reason, the committee bill sets minimum standards on the age and service requirements which can be used to exclude employees from participation in plans. Under the new rules, a qualified plan cannot require an employee to serve longer than one year or attain an age greater than 25 (whichever occurs later) as a condition of eligibility to participate in the plan. Thus, an employee who reaches age 25 and has at least a year of service would be eligible to participate (unless he is excluded for some reason other than age or service). However, a plan that provides vested rights immediately on participation will be permitted to set the participation requirements at no more than 3 years of service and age 25.

The Committee believes that these rules are reasonable. They provide a balance between the need to grant employees the right to participate in pension plans at a relatively early age so that they can begin to acquire pension rights and the need to avoid the administrative drawbacks that would be involved in granting coverage to immature and transient employees whose benefits would in any event be small. The participation rules also prevent potential avoidance of the vesting rules in the committee bill.

The bill also adopts a number of provisions which are carefully designed to make the minimum age and service requirements for participation work effectively. The Secretary of the Treasury or his delegate is given the authority to determine under regulations what constitutes a year of service for purposes of fulfilling the participation requirement in order to make the service requirement sufficiently flexible to meet the many varying situations which arise in different industries operating under different conditions of employment. At the same time, guidance is provided to those framing the regulations so as to

minimize the possibilities of abuse. The bill, for example, provides that a qualified plan may not establish a service requirement for participation which has the practical effect of treating as a year of service an average period for all employees of more than 12 months or which excludes any employee who has more than 17 months of continuous service. In addition, the bill provides that a seasonal employee whose customary employment is for at least 5 months in a 12-month period is generally to be given credit for a year of service if he works his customary season months in a 12-month period.

The Secretary of the Treasury or his delegate is also given authority to prescribe by regulations different rules for determining a "year of service" for those industries whose normal work schedules are substantially different from those that are generally applicable. (For example, the regulations could, where consistent with the practice of an industry, permit 100 hours of employment to be treated as one month, or 1,000 hours of employment to be treated as one year.)

The bill also provides guidance to the Secretary or his delegate in issuing regulations in regard to the computation of the years of service of an employee who has a break in service. This is of significance since an employee will generally receive greater vested rights if all his periods of service with the employer are combined and treated as one period of service than if each period of service interrupted by a break is treated separately. This matter involves difficult issues. On the one hand, it appears desirable not to require service prior to the break to be merged with service after the break where the break in service is of substantial duration and the period of prior service is relatively short. This is because in such cases, the plan frequently will not have records regarding the employee's prior service and the administrative difficulties resulting from any requirement to merge service prior to the break with service after the break might make employers reluctant to rehire employees and yet at the same time would not provide substantial benefits for the latter. On the other hand, where the break in service is of relatively moderate duration, treating each period of service as a separate period could give rise to abuses by giving employers an inducement to discharge covered employees and then rehire them after a short time in order to reduce the cost of financing plan benefits. An additional consideration is that where an employee has acquired an attachment to the firm by serving a substantial number of years, and particularly where he has accumulated substantial vested rights to benefits, it seems reasonable that all his service including service prior to the break should be taken into consideration in determining his participation under the plan.

Your committee has resolved these issues by providing that where an employer rehires an employee who has had a break of service of at least one year after serving with the employer for less than 4 consecutive years, the plan will not be considered to be following an unreasonable procedure merely because it does not take into consideration his prior service. However, where a rehired employee had completed at least 4 consecutive years of service before the break, his prior years of service must be taken into consideration for purposes of computing his years of service unless the break is for 6 years or more. However, if a rehired employee acquired a nonforfeitable right to at least 50 per-

cent of his accrued benefits derived from employer contributions prior to the service break, all his prior service must be taken into consideration in computing his years of service, regardless of the duration of the break.

Under plans which provide defined or specified benefits, it is more expensive for an employer to finance an equivalent retirement benefit for an older employee than for a young employee. To avoid making it more difficult for older workers to find employment, the bill permits plans which provide defined benefits to exclude from participation employees who begin employment within 5 years of the normal retirement age. This, for example, permits a defined benefit plan which provides for a normal retirement age of 65 to exclude an employee who begins work at the age of 60. Such exclusions are not permitted under money purchase pension plans or profit sharing plans. Under these plans, an employee is not promised any specified benefits, but instead is entitled only to the amount that is in his account (employer contributions, forfeitures, and employee contributions, adjustments for earnings, losses, and expenses) with the result that it is no more expensive for the employer to cover older employees than younger employees under such plans.

For purposes of satisfying the coverage rules of the Internal Revenue Code, a plan is permitted to exclude from participation employees covered by a collective bargaining agreement where the agreement does not provide that such employees are to be included in the plan and there is evidence that retirement benefits were the subject of good faith bargaining. This provision has two objectives: first, it recognizes that employees who are represented in collective bargaining agreements may prefer other forms of compensation, such as cash compensation, to coverage in a plan; and second, it makes it possible for employees who are not covered by a collective bargaining agreement to receive the advantages of coverage in a qualified plan where some employees of the same firm have elected through collective bargaining agreement not to be covered by the plan.[9] At present, it frequently is not feasible for the former employees to receive the advantages of a qualified plan because the very fact that the employees covered by the collective bargaining agreement rejected coverage results in disqualifying the plan on the ground that it does not satisfy the coverage requirements for nondiscrimination.

Finally, all government plans (including the federal civil service pension plan) and plans of churches (unless they elect to be subject to the new rules) are exempted from the new participation standards as well as from the minimum vesting and minimum funding standards described below. However, both government plans and church plans must continue to meet the requirements for qualification under present law in order to make their employees eligible for the tax benefits associated with qualified plans. The committee exempted government plans from the new higher requirements because adequate information is not now available to permit a full understanding of the impact these new requirements would have on government plans. For this reason the

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[9] In the case of a plan covering airline pilots under a collective bargaining agreement, the bill permits the exclusion of the employees who are not covered by the collective bargaining agreement for purposes of the coverage requirements for nondiscrimination.

bill specifically provides that the Committee on Ways and Means and the Committee on Education and Labor are to study the participation, vesting, and funding practices of government plans, government plan fiduciary standards, factors affecting the mobility of government employees and those employed under Federal procurement contracts, and the need for Federal standards in each of these matters. Each committee is to submit to the House of Representatives not later than December 31, 1976, the results of the studies, together with its recommendations.

In order to minimize administrative problems, and ensure insofar as possible that plans which satisfy the requirements of the Internal Revenue Code also meet the pension standards which are to be administered by the Labor Department, and vice versa, the bill provides that the Treasury regulations with respect to the participation, vesting, and funding requirements of the bill (other than regulations to enforce the antidiscrimination requirements of sec. 401(a)(4) of the code) are to be effective for plan years beginning after December 31, 1975, only if approved by the Secretary of Labor. Where the bill's provisions apply before that date (as in the case of new plans and plans which elect earlier dates) then the regulations may be prescribed without the necessary approval of the Secretary of Labor. However, these regulations are not to apply beyond the December 31, 1975, plan year cutoff date.

To give existing plans time to adjust to the new age and service participation requirements, the effective date of these requirements is deferred to January 1, 1976, for plans in existence on January 1, 1974. For plans adopted on or after January 1, 1974, the new minimum age and service requirements will be effective in the first plan year beginning after the date of enactment. However, for existing plans which were the subject of collective bargaining agreements, the new participation standards are not to apply until the later of (1) the expiration date of the last of the present collective bargaining agreements (but not later than January 1, 1981) or (2) January 1, 1977.

Vesting.—Coverage under a pension plan does not aid an individual if he later forfeits his right to his pension benefits upon voluntary or involuntary termination of employment. This is an important consideration in view of the fact that ours is a fairly mobile economy where employees tend to change jobs frequently, especially in their younger years. Moreover, the cyclical and technological nature of certain industries results in frequent layoffs over a work career for employees in those industries, as in aerospace and defense. The committee bill deals with this problem by requiring qualified pension plans to grant covered employees reasonable minimum vested rights to their accrued benefits.

The committee bill helps to assure that covered employees will actually benefit from pension plans by requiring qualified plans, as a condition of qualification under the Internal Revenue Code to meet reasonable minimum vesting standards. Qualified plans are required to grant covered employees nonforfeitable rights with respect to their own contributions. In addition, such plans are required to provide covered employees minimum vested rights with regard to employer contributions after they have fulfilled certain specified requirements.

In adopting these minimum vesting requirements, your committee was guided by two broad considerations. The first relates to the need to balance the protection offered by the minimum vesting provision against the additional cost involved in financing the plan. Employees, of course, would be accorded the maximum protection if they were granted immediate and full vested rights to plan benefits. However, it is generally recognized that a requirement for immediate and full vesting would not be feasible because it would involve such substantial additional costs that it would impede the adoption of new plans and the liberalization of existing ones.

The second broad consideration guiding the committee in regard to minimum vesting is the need to provide adequate flexibility to the hundreds of thousands of retirement plans, to enable these plans to provide adequate vesting protection to their covered employees in the light of the individual circumstances and conditions confronting them. In other words, the committee does not believe that it would be desirable to force all retirement plans into one rigid mold so far as vesting is concerned.

In view of these considerations, the committee bill provides three alternative vesting options:

Under one option, a qualified plan would be required to provide an employee with vested rights to at least 25 percent of his accrued benefits from employer contributions after 5 years of covered service, plus an additional 5 percent for each of the next 5 years and 10 percent for each of the next following 5 years. This means that under this option, at least 50 percent of the employer-provided benefits must be vested after 10 years of covered service and 100 percent vested after 15 years of covered service. This option is designed to enable plans to provide the required vesting on a gradual basis according to years of service, generally without reference to the age of the employee. This option is neutral with respect to age, since all employees who fulfill the required service requirements are entitled to the specified vesting without regard to their age.

A second option permits firms which wish to provide faster vesting for their more mature employees than for their younger ones to do so by taking into consideration the age of the employee as well as his service for purposes of computing his vested rights. Under this option, the plan is required to provide a covered employee who has at least 5 years of covered service a vested right in at least 50 percent of the accrued benefits financed by the employer's contributions when the sum of his age and years of service equals 45; the minimum required vesting percentage would thereafter be increased by 10 percentage points a year in each of the following 5 years. This would, for example, provide an employee who began work for the employer at the age of 25, a vested right in 50 percent of his accrued benefits financed by employer contributions after 10 years of covered service when he reaches the age of 35. After completing an additional 5 years of service and attaining age 40 he would then be vested in 100 percent of his accrued benefits. On the other hand, an employee who starts to work for the employer at the age of 40 under this option would at the age of 45, upon completion of 5 years of service, receive a 50 percent vested right in his accrued benefits.

The third option provided under the committee bill permits qualified plans to fulfill the minimum vesting requirements by providing employees a 100 percent nonforfeitable right to accrued benefits derived from employer contributions when they have achieved at least 10 years of service. The committee provided this option because it grants covered employees complete vesting protection after the completion of a reasonably short period of service.

Because the objective is to encourage more adequate provision for retirement, plans are permitted to defer the payment of benefits to individuals with vested rights until they reach normal retirement age and are separated from the firm.[10] As a general rule, the plan will specify what is normal retirement age for this purpose. However, in order to prevent undue delay in the payment of benefits, payment must begin not later than 60 days after the close of the last plan year in which the participant (1) attains age 65, (2) reaches the 10th anniversary of the start of his participation, or (3) terminates his employment. The "10th anniversary" provision was adopted to encourage the employment of individuals who are hired at mature ages for a long enough period to enable them to earn significant benefits under the plan.

The committee further decided to apply the minimum vesting requirements to benefits accrued prior to the effective date of the provision as well as to benefits accrued after this date on the ground that employees merit equal protection with regard to plan benefits regardless of when these benefits accrued. This is achieved by generally taking into account the employee's entire service with the employer in determining both his nonforfeitable vesting percentages and the amount of accrued benefits to which these vesting percentages are applied.

To keep the operation of the minimum vesting requirement reasonable and to avoid imposing undue burdens on plans, certain periods of service are permitted to be excluded in determining the employee's nonforfeitable rights. The service which may be excluded is:

(1) service before age 25,

(2) service during a period for which the employee declined to contribute to a plan requiring employee contributions,

(3) service during any period for which the employer did not maintain the plan,

(4) seasonal service which does not include a sufficiently long period of time in each 12-month period to be counted as service for purposes of the plan,

(5) certain service broken by periods of suspension of employment, and

(6) service before January 1, 1969, unless the employee has had at least 5 years of service after December 31, 1968. (This latter exclusion was adopted to prevent the possibility that plans would otherwise be required to incur extremely large costs for benefits to previously retired employees who would otherwise

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[10] However, to avoid requiring a plan to carry relatively small amounts of benefits on its books for a long period of time, the bill permits a plan to elect to pay off the employee's vested rights in the form of a lump-sum payment when the employee is separated if the amount of the distribution is less than $1,750. In addition, at the election of the employee, a plan which so provides may make lump-sum payments of any amount to employees at the time they are separated from service in lieu of retirement benefits.

have the incentive to come back to a firm for relatively short periods of time, primarily in order to obtain plan benefits for their prior service).

How much protection is actually afforded to employees under the minimum vesting provision depends not only on the minimum vesting percentages set forth in the bill but also in the case of defined benefits on the accrued benefits to which these minimum vesting percentages are applied. For this reason, your committee has devoted particular attention to the development of fair and equitable procedures for the computation of accrued benefits.

Under the first option, the accrued benefit is determined by providing that the plan may not allow employees to accrue benefits in any year of service at a rate which is more than 133⅓ percent of the rate of accrual in any other year.[11] The primary purpose of this provision is to prevent attempts to defeat the objectives of the minimum vesting provisions by providing undue "backloading", i.e., by providing inordinately low rates of accrual in the employee's early years of service when he is most likely to leave the firm and by concentrating the accrual of benefits in the employee's later years of service when he is most likely to remain with the firm until retirement. Of course, a plan under which employees accrue benefits at a uniform rate would satisfy the requirements of this option. The 133⅓ percent rule also is obviously not intended to place a limit on the amount of benefit increases for future service that may be provided under plan amendments. Moreover, this rule is not to apply to the accrual rate of any plan year after the participant is eligible to retire with benefits which are not actuarially reduced on account of age or service.

Under a second option, a defined benefit plan may provide for an annual rate of accrual which is not less than 3 percent of the maximum benefit to which the participant would be entitled if he became a participant at the earliest possible entry age under the plan and served continuously until the earlier of age 65 or the retirement age specified under the plan. This treatment provides equal amounts of accrued benefits to employees who are separated prior to retirement age after having worked the same number of years, regardless of their respective ages at the time the service was performed.

Under present law, highly mobile employees such as engineers, frequently do not derive benefits from pension plans even when such plans have liberal vesting provisions because they tend to change jobs before they acquire vested rights in any particular plan. The bill approved by your committee will help such employees to secure actual benefits from pension plans. It provides that where an employer sets up different pension plans for different groups of employees the rate of vesting granted under the different plans need not be the same so long as the combined effect of all the plans is nondiscriminatory. This permits an employer to cover his highly mobile employees in a separate plan which provides faster vesting but lower benefits at normal retirement age than the other plans that he establishes for his other employees.

[11] However, it is permissible for a plan to provide an accrual rate for any year before the 11th year of service which exceeds 133⅓ percent of the accrual rate after the 10th year of service.

In addition, the committee bill instructs the Secretary of Labor to conduct a full and complete study of the steps necessary to ensure that professional, scientific and technical personnel and others working in associated occupations employed under federal procurement, construction or research contracts or grants will, to the extent feasible, be protected against the forfeitures of pension or retirement rights as consequence of job transfers or loss of employment resulting from terminations or modifications of Federal contract grants or procurement policies. The Secretary of Labor is further instructed to report the results of his study to the Congress within two years after the date of enactment of the Act. Also, if he determines it to be feasible, the Secretary is to develop regulations within one year after the date on which he submits his report to the Congress, which will provide for the better protection of the vesting rights of the employees concerned. These regulations are to take effect unless either house of the Congress adopts a resolution disapproving the regulations within 90 days after they are submitted to the Congress.

Under certain circumstances, a plan's vesting rules may cause the prohibited discrimination. Questions have arisen as to whether a plan which satisfies the vesting requirements provided by your committee automatically satisfies the vesting requirements of the nondiscrimination rules. To remove any possible ambiguity on this subject, the committee bill specifically provides that a plan which satisfies the minimum vesting requirements provided by this legislation is to be treated as satisfying any requirements regarding the vesting schedule and the rate at which benefits accrue, resulting from the application of the Internal Revenue Code requirements regarding nondiscrimination, unless (a) there has been a pattern of abuse under the plan (such as a firing of employees before their accrued benefits vest), or (b) there have been, or there is reason to believe there will be an accrual of benefits or forfeitures tending to discribinate in favor of employees who are officers, shareholders, or highly compensated.

Table 3 shows that the additional costs of financing plans involved when the minimum vesting requirement adopted by your committee becomes fully effective is expected to be moderate. These cost estimates are necessarily based on assumptions as to turnover rates, age distribution, etc. However, the range of costs is believed to be broadly indicative of the expected experience of employers generally.

TABLE 3.—ESTIMATED RANGE OF INCREASE IN PENSION PLAN COSTS UNDER THE REQUIREMENTS FOR MINIMUM VESTING ADOPTED BY THE COMMITTEE

	Present vesting—			
	None	Moderate [1]	Liberal [2]	All plans
Percentage of pension plan members covered under such plans	23	56	21	100
Range of present plan cost as a percent of payroll	1.8–11.2	2.2–12.5	2.2–12.7	1.8–12.7
Range of increase in cost under committee vesting requirement:				
As a percent of payroll	.2–1.5	.1–.2	0	0–1.5
As a percent of present plan cost	5–58	1–8	0	0–58

[1] Plan provides some vesting, but less liberal than full vesting after 10 years of service.
[2] Plan provides full vesting after 10 years service or less, with no age requirement.

Source: "Estimates prepared for the Joint Commtitee on Internal Revenue Taxation," by Donald S. Grubbs, Jr.

The additional costs will, of course, be zero or smallest for those plans which now have liberal vesting provisions and greatest for those plans which now provide no vesting prior to retirement. This reflects the fact that the minimum vesting provisions will generally bring the costs of the latter plans up to the level of those plans which now have liberal vesting provisions. Overall, for all plans, the cost increases resulting from the new minimum vesting requirements will range from 0 to 1.5 percent of payroll.

In the case of plans adopted after January 1, 1974—which will have been adopted with knowledge of the new requirement—the effective date is the first plan year beginning after the date of enactment. However, for plans in existence on January 1, 1974, to provide time to adjust to the new minimum vesting requirements, the effective date of the minimum vesting standards is plan years beginning after December 31, 1975. For plans, which are maintained pursuant to collective bargaining agreements, however, the minimum vesting requirements take effect for plan years beginning after the expiration of the latest agreement or December 31, 1980, whichever is earlier (but in no event before January 1, 1977).

In addition, for all plans in existence on December 31, 1973, the vesting provisions are to become effective gradually over a 5-year transition period. Under this rule, 50 percent of the vested rights generally called for under the legislation are to become effective in the first year in which the vesting requirement applies. Thereafter the required vesting is to increase 10 percentage points each year until reaching 100 percent of the vested rights generally required under the legislation after the fifth year.

Finally, the Secretary of Labor is authorized to provide variances from the generally applicable minimum vesting requirements for multi-employer plans whenever he finds that the application of these requirements would (1) increase the cost of the parties to the plan to such an extent that there would be (a) a substantial risk to the voluntary continuation of the plan, or (b) a substantial curtailment of pension levels or the levels of employees' compensation, or (2) impose unreasonable administrative burdens regarding the operation of the plan, and (3) where the application of these requirements would be adverse to the interest of plan participants generally. Under such variances, the Secretary of Labor would prescribe alternative methods by which the multi-employer plan concerned could satisfy the minimum vesting requirements for the period of time this is necessary. These variances from the vesting requirements are not, however, to be prescribed unless all plan participants and other interested persons have received adequate notice from the plan administrator of any hearing to be held to consider the variance.

Minimum funding standards.—Your committee believes that it is essential for plans to be adequately funded in accordance with a contributions schedule which will produce sufficient funds to meet the obligations of the plan when they fall due. Such an adequate contributions schedule for funding plans not only protects the rights of employees under the plan but also provides an orderly and systematic way for employers to pay their plan costs.

You committee believes that the minimum funding requirements under present law are inadequate because they do not require any pro-

vision to be made to amortize unfunded past service liabilities. Instead they merely require the contributions to the plan to be sufficient to pay normal costs (the costs attributable to the current operation of the plan) and to prevent an increase in unfunded liabilities. To remedy this, your committee has provided new minimum funding standards for qualified plans. In the most typical case, the standard requires contributions to the plan to be sufficient not only to pay normal costs but also to amortize all unfunded past service liabilities in level payments over specified periods of time. A second standard requires contributions to be based on the accrued unfunded vested liabilities of the plan if this results in higher annual payments than the general funding standard. It is anticipated that this second standard will be used for only a small minority of the plans which have relatively large unfunded vested liabilities.

The new funding standards do not apply to the following types of qualified plans:

(1) Profit-sharing and stock bonus plans. (There is no need for a requirement that contributions be sufficient to fund a specified level of benefits in the case of these plans since they do not specify that participants are to receive any designated amount of benefits, but instead require the paying out of whatever benefits the funds in the plan will purchase on the date the benefits are to begin.)

(2) Plans funded exclusively through the purchase of individual insurance contracts which provide for level annual premium payments. (These plans are excluded from the funding requirements because they have behind them the funding of the insurance companies involved.)

(3) Government plans. (However, government plans are still required to meet the present funding standards which require contributions to be sufficient to pay normal pension costs plus the interest on past service liabilities. Also, as noted previously, your committee has provided for a study of government plans to determine the need for supplying funding standards.)

(4) Church plans unless these plans elect to be covered by such requirements, and

(5) Plans which after the date of enactment of the legislation do not provide for employer contributions.

In the most typical case where the first general funding standard is employed, employers maintaining single-employer plans not in existence on the effective date of the legislation must pay normal costs currently and amortize their past service liabilities in level payments over no more than 30 years. A similar amortization period of no more than 30 years is required for past service liabilities arising as a result of single-employer plan amendments after the effective date. However, in recognition of the fact that large numbers of plans assumed heavy past service liabilities prior to any requirement to amortize such liabilities, plans in existence on the effective date of the legislation are allowed a longer period—up to 40 years—to amortize past service liabilities existing at the beginning of the first plan year to which the requirement applies. In addition, multi-employer plans are allowed to amortize all past service liabilities, including those created after the effective date of the legislation, over a period of up to

40 years. This recognizes that multi-employer plans generally have an added element of financial strength in that their contributions come from a number of employers who as a group are less likely than comparable single employers to experience business difficulties.

This funding standard, which will apply to the overwhelming majority of plans, is comprehensive since it requires amortization of all accrued past service liabilities (i.e., both vested and nonvested unfunded past service liabilities).

The level payment method of funding adopted by your committee is analogous to the payment of a home mortgage in that each specified payment includes a payment for both interest and principal. It has the advantage of spreading the payments out evenly over the payment period which generally makes it easier for the employer to plan for meeting the payments. Another factor in your committee's decision is that the level payment method, while providing for adequate amortization of past service costs, initially adds only relatively moderate amounts to an employer's existing funding costs. This is because interest on unfunded accrued past service costs, which accounts for the bulk of the payments under the level payment method in the early years, is already required to be contributed to a defined benefit plan under present law.

Provision is also made for the equitable funding of experience deficiencies which arise when the actual plan costs turn out to be greater than were previously estimated on the basis of the actuarial assumptions—for example, when the value of the plan assets is less than was expected. In establishing a minimum funding standard for such experience deficiencies, the committee sought to avoid two problems. If it allowed the experience deficiencies to be funded over a very long period of time, an incentive would be provided for the use of actuarial assumptions which understate the costs since any resulting deficiencies could then be made up over a long period of time without penalty. On the other hand, if the experience deficiencies were required to be amortized over too short a period, employers would encounter hardship in meeting the annual payments. This is especially pertinent in view of the fact that most actuarial or experience deficiencies are inadvertent.

Your committee's bill seeks to avoid both these problems by allowing experience deficiencies to be funded in level amounts over a period of up to 15 years for single employer plans and up to 20 years for multiemployer plans. Symmetrical treatment is provided for experience gains which are attributable to a favorable variation between actual experience and the actuarial assumptions entering into the determination of the employer's cost and contributions.

The determination of experience gains and losses for this purpose will generally be made every three years except where the Secretary or his delegate (pursuant to regulations) finds it necessary to require the determination to be made more frequently.

Relief measures are provided to mitigate the impact of the funding requirements in cases where it would otherwise result in hardship. The bill gives the Internal Revenue Service the authority to waive the minimum funding requirement in cases where the application of this requirement would involve substantial business hardship to the employer and would be adverse to the interests of plan participants in the aggregate.

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However, the waived contribution must be made up in level payments over a maximum of 15 years. To avoid the indefinite postponement of the fulfillment of the funding standards, the committee bill further provides that not more than five such waivers may be made in any 15-year period.

The committee also recognizes that multi-employer plans which are negotiated as a result of collective bargaining agreements may involve different considerations in regard to funding than individual employer plans. While it is the objective of the committee's bill to require adequate funding for multi-employer plans as well as for individual employer plans, the committee is aware that a number of multi-employer plans are not as well funded as they might be at the present time and that the application of the new funding standards to such plans without an adequate transition period might cause hardship and be detrimental to the interests of the employees covered by such plans. For this reason, if 10 percent or more of the number of employers contributing to a multi-employer plan demonstrate to the satisfaction of the Secretary of Labor that they would experience substantial business hardships if they were required to amortize past service liabilities and experience deficiencies over the periods of time specified by the bill (40 years and 20 years, respectively), and if this requirement would be adverse to the interests of plan participants in the aggregate, then upon certification by the Secretary of Labor to the Secretary of the Treasury, these plans are to be allowed an additional 10 years to amortize such costs.

In addition, the Secretary of Labor is authorized to provide variances from the minimum funding requirements for multi-employer plans where he finds that the application of these requirements would increase costs to the extent that there would be a substantial risk to the voluntary continuation of the plan, impose unreasonable administrative burdens in regard to the operation of the plan and be adverse to the interests of plan participants in the aggregate.[12]

Your committee believes that the generally applicable funding standard, which requires past service liabilities to be amortized in level payments over a specified number of years, will generally provide an equitable and adequate approach to funding the vast majority of plans. However, in some cases where plans have very substantial vested liabilities and relatively small asset values, it appears desirable to require the unfunded vested liabilities to be amortized more rapidly than under the generally applicable funding standard. For this reason, your committee has provided a second funding standard, based on accrued unfunded vested liabilities. This standard is to apply in lieu of the generally applicable funding standard if it results in a higher annual contribution. Under this standard, the accrued vested liabilities of the plan and the value of its assets are determined. Where the former exceeds the latter, the contribution for that year must be sufficient to cover the first year's payment under a level annual payment schedule required to amortize the difference in 20 years. A new

[12] The conditions under which such variances from the funding requirements may be granted are identical to those applying to variances from the minimum vesting requirements described above.

determination with respect to the applicability of this second funding standard is to be made in each of the succeeding years. It is contemplated that this funding standard will be required for only a small minority of qualified plans.

In general, for purposes of funding, the value of the plan's assets is to be determined on the basis of any reasonable actuarial method of valuation which takes fair market value into account under regulations prescribed by the Secretary of the Treasury or his delegate. However, to permit fixed obligations, which frequently are held until maturity, to be given stable values for funding purposes, the plan administrator is given the option of determining the value of a bond or other evidence of indebtedness (which is not in default as to principal or interest) on an amortized basis.

Your committee is aware that the actuarial assumptions made by actuaries in estimating future pension costs are crucial to the application of minimum funding standards for pension plans. This is because in estimating such pension costs, actuaries must necessarily make actuarial assumptions about a number of future events, such as the rate of return on investments (interest), employee future earnings, and employee mortality and turnover. In addition, actuaries must also choose from a number of funding methods to calculate future plan liabilities. As a result, the amount required to fund any given pension plan can vary significantly according to the mix of these actuarial assumptions and methods.

Conceivably an attempt might be made to secure uniform application of the minimum funding standards by authorizing the Secretary of the Treasury or some other authority to establish the specific actuarial assumptions and methods that could be used by pension plans. This would involve, for example, setting a specific rate of interest that could be used by certain pension plans or by specifying certain turnover rates for specified types of firms. However, the committee does not believe that this would be an appropriate procedure, since the proper actuarial assumptions may differ substantially between industries, among firms, geographically, and over time. Further, in estimating plan costs each actuarial assumption may be reasonable over a significant range and it would appear that the proper test would be whether all actuarial assumptions used together are reasonable. These considerations strongly indicate that any attempt to specify actuarial assumptions and funding methods for pension plans would in effect place these plans in a straitjacket so far as estimating costs is concerned, and would be likely to result in cost estimates that are not reasonable.

However, your committee's bill requires the actuarial assumptions of each plan to be certified by an actuary every three years (or more frequently if required by the Internal Revenue Service). These certifications will be reported to the Service. Moreover, in order to insure that such certification will be made by competent actuaries, the bill provides that the Secretary of the Treasury is to establish qualifications for actuaries and is to certify for practice before the Internal Revenue Service the persons who meet these standards. In the case of individuals applying for enrollment as actuaries before January 1, 1976, the standards and qualifications set forth by the Secretary shall include a requirement for an appropriate period of responsible actuarial experience or of responsible experience in the administration of pension plans. The Secretary of the Treasury is also to review the actuarial

assumptions used by particular plans and an advisory board of actuaries is to be established to assist him in setting up general standards as to reasonableness of assumptions.

The bill also provides new and more effective penalties where employers fail to meet the funding standards. In the past, an attempt has been made to enforce the relatively weak funding standards existing under present law by providing for immediate vesting of the employees' rights, to the extent funded, under plans which do not meet these standards. This procedure, however, has proved to be defective since it does not directly penalize those responsible for the underfunding. For this reason, the bill places the obligation for funding and the penalty for underfunding on the person on whom it belongs—namely, the employer.

This is achieved by imposing an excise tax where the employer fails to meet the funding standards, which starts out at a relatively modest level and increases sharply where there is continued failure to make the indicated contributions. More specifically, if an employer fails to contribute sufficient amounts to meet the new funding requirements, he will be subject to a nondeductible excise tax of 5 percent per year on the amount of the underfunding for any year. If the employer fails to make up the underfunding by 90 days after original notification by the Internal Revenue Service (but with the Service in a position to grant extensions of time), then the employer is subject to a second level excise tax amounting to 100 percent of the underfunding. This determination by the Service is appealable to the Tax Court and no assessment may be made until after the end of the litigation. Since the employer remains liable for the contributions necessary to meet the funding standards even after the payment of the excise taxes, it is anticipated that few, if any, employers will willfully violate these standards.

For plans adopted after January 1, 1974, which will have been adopted with knowledge of the new requirement, the effective date of the new funding requirements is the first plan year beginning after the date of enactment. For plans in existence on January 1, 1974, which are not maintained pursuant to collective bargaining agreements, the effective date of the minimum funding standards is deferred to plan years beginning after December 31, 1975. And for plans which are maintained pursuant to collective bargaining agreements, the minimum funding requirements take effect for plan years beginning after the expiration of the latest agreement (if this is after December 31, 1975) or after December 31, 1980, whichever is earlier.
after the later of (1) the expiration date of the last of the present collective bargaining agreements (but not later than December 31, 1980) or (2) December 31, 1976.

Other provisions to protect covered employees and their beneficiaries.—In addition to the minimum participation, vesting and funding standards provided in the bill, your committee has adopted a number of specific provisions to protect the rights of employees and beneficiaries under qualified plans.

Qualified plans that provide annuities must pay benefits in the form of a joint and survivor annuity, giving the surviving spouse an annuity equal to at least 50 percent of the annuity paid during the joint lives, unless the participant elects in writing before the annuity starting date not to take a joint and survivor annuity.

Qualified plans must provide that retirement benefits may not be assigned or alienated, except for voluntary and revocable assignments of not more than 10 percent of the benefits.

Provision is made to prevent mergers or consolidation of plans from reducing the rights of participants. This is achieved by specifying that immediately after the merger each participant would be entitled to receive a benefit equal to or greater than the benefit he would have been entitled to receive immediately before the merger had the plan been terminated.

Protection is given to retired individuals and individuals who are separated from the service of the employer against reductions in private plan benefits when social security benefit levels increase. In general, under present integration procedures, social security benefits attributable to employer contributions are treated as though they were part of the private plan. As a result when the level of social security benefits increases, some integrated plans have reduced the amount of the retirement benefits that they provide for covered employees.

Present law under administrative practice provides that qualified plans may not use increases in social security benefit levels to reduce the benefits that they pay where the employees concerned are retired and are already receiving integrated plan benefits. The bill codifies this treatment for retired persons. It also extends the prohibition against reducing plan benefits where social security benefit levels are increased to cases where the individuals concerned are separated from service prior to retirement and have deferred nonforfeitable rights to plan benefits. This provision is effective for increases in social security benefits which take place after the date of enactment or on the date of the first receipt of plan benefits or the date of separation from service (whichever is applicable) if that date is later.

These changes do not affect the ability of plans to use the integration procedures to reduce the benefits that they pay to individuals who are currently covered when social security benefits are liberalized. Your committee, however, believes that such practices raise important issues. On the one hand, the objective of the Congress in increasing social security benefits might be considered to be frustrated to the extent that individuals with low and moderate incomes have their private retirement benefits reduced as a result of the integration procedures. On the other hand, your committee is very much aware that many present plans are fully or partly integrated and that elimination of the integration procedures could substantially increase the cost of financing private plans. Employees, as a whole, might be injured rather than aided if such cost increases resulted in slowing down the rate of growth of private retirement plans.

In view of the serious issues involved in the integration of private plans with the social security system, your committee believes that it is desirable to postpone action on this issue pending further study of this problem. More specifically, your committee plans to consider this overall problem again at the earliest opportunity, possibly in connection with future tax reform or social security legislation. However, your committee believes that no further integration of social security and pension benefits should be allowed under any further regulations issued by the Secretary or his delegate at least until June 30, 1975.

Portability.—In view of the fact that ours is a highly mobile economy, characterized by high employee turnover rates, various proposals have been made to establish a system for the portability of vested rights to benefits from one plan to another when an employee changes jobs.

While the complete portability of vested rights to benefits from one pension fund to another is hard to achieve because of the numerous basic differences in private pension plans, your committee's bill contains a number of provisions which will achieve much of the advantage of portability. Under present law, when an employee changes jobs, it is already possible for funds representing his vested rights to benefits under his old employer's plan to be transferred to the retirement plan of his new employer without payment of tax on an optional basis—that is, if the employee and the administrators of the plans involved agree to the transfer. Your committee's bill adds another way in which individuals can transfer their retirement funds on a tax-free basis to a tax-exempt retirement account. It allows them to establish a new type of account called a "rollover account." Under the new arrangement, individuals will have the right to roll over into individual retirement accounts, without payment of current tax, complete distributions of funds financed by employers under qualified plans, H.R. 10 plans, as well as funds from individual retirement accounts, provided that the transfer into the new account is made within 60 days of the withdrawals of the funds from the old plans.

Provision also is made to supply adequate information to plan participants regarding their vested rights to retirement benefits so that they will not neglect to claim these benefits when they become eligible to receive them. In this connection, plan administrators are required to furnish each separated employee who has vested rights an individual statement showing the nature, amount and form of the deferred vested benefit to which he is entitled.

Also, in order to insure that employees will be fully alerted to their retirement benefits, the Social Security Administration will keep records regarding the vested rights of separated employees under single employer plans. Annual information pertaining to such vested rights will be forwarded by plan administrators to the Social Security Administration through the Internal Revenue Service. The Social Security Administration will then furnish this information regarding vested rights to individuals both on request and at the same time that official information is supplied to the employee or his beneficiary regarding social security benefits.

Because the furnishing of such information involves considerably more difficulties for multi-employer plans than for single-employer plans, the bill does not require multi-employer plans to supply individual statements regarding vested rights to separated employees; nor does it require multi-employer plans to file information showing the vested rights of separated employees. However, the Secretary of the Treasury after consultation with the Secretary of Health, Education and Welfare, may prescribe regulations requiring multi-employer plans to submit such information, to the extent it is found feasible.

Plan termination insurance.—Although your committee regards the development of an adequate program of plan termination insurance as essential to protect the rights of covered employees, the bill makes no provision for such plan termination insurance. This is because provision for plan termination insurance is made in H.R. 12906, to be reported by the Committee on Education and Labor.

Fiduciary requirements.—Your committee's bill makes no change in the rules relating to fiduciaries of qualified retirement plans. As with plan termination insurance, this is not because your committee regards this matter as unimportant but rather because H.R. 12906, to be reported by the House Committee on Education and Labor, contains provisions providing for additional rules regarding fiduciary requirements.

Enforcement.—Your committee's bill relies heavily on the tax laws in order to secure compliance with the new requirements that it imposes on pension plans. Plans, for example, are required to comply with the new coverage, vesting, and funding standards in order to qualify for favored tax treatment under the Internal Revenue Code. In addition, excise taxes are imposed for failure to meet the funding standards. As a result, these substantive pension provisions would be administered by the Internal Revenue Service.

Your committee believes that primary reliance on the tax laws represents the best means for enforcing the new improved standards imposed by the bill. Historically, the substantive requirements regarding nondiscrimination, which are designed to insure that pension plans will benefit the rank and file of employees, have been enforced through the tax laws and administered by the Internal Revenue Service. As a result, the Internal Revenue Service is already required to examine the coverage of the retirement plans and their contributions and benefits as well as funding and vesting practices in order to determine that the plans operate so as to conform to these nondiscrimination requirements. Also, the Internal Revenue Service has administered the fiduciary standards embodied in the prohibited transactions provisions since 1954.

Your committee believes that the Internal Revenue Service has generally done an efficient job in administering the pension provisions of the Internal Revenue Code. The very extensive experience that the Service has acquired in its many years of dealing with these related pension matters will undoubtedly be of great assistance to it in administering the new requirements imposed by the committee bill.

However, because the bill increases the administrative job of the Service in this respect, your committee believes that it is desirable to add to its administrative capability for handling pension matters. For this reason, the committee bill provides for the establishment by the Internal Revenue Service of a separate office headed by an Assistant Commissioner of Internal Revenue to deal primarily with pension plans and other organizations exempt under section 501(a) of the Internal Revenue Code, including religious, charitable, and educational organizations. In order to fund this new office, the bill authorizes appropriations at the rate of $70 million per year for such administrative activities. It is intended that the Internal Revenue Service obtain from all appropriate pension administration sources annual statistical data to indicate the operations of the private retirement system for the purpose of evaluations and public information.

In addition to providing additional opportunities for redress in case of disagreement with the decisions of the Internal Revenue Service on pension matters, both employees and employers will be allowed to appeal determination letters issued by the Internal Revenue Service to the Tax Court after exhausting their remedies under the Internal Revenue Service administrative procedures.

Equalizing tax treatment: in general.—Another objective of the committee bill is to provide more rational and equitable tax treatment under retirement plans.

The committee believes that there is need on equity grounds to grant individuals who are not covered by any kind of qualified pension plan some of the tax advantages associated with such plans by providing them with a limited tax deduction for their retirement savings.

In addition, there is no justification for the present widely disparate treatment which places no specific limitation on the amount of deductible retirement plan contributions for corporate employees and at the same time limits the deductible contributions to pension plans on behalf of the self-employed to a maximum of 10 percent of earned income or $2,500 a year.

This unjustifiable difference in treatment has resulted in unduly large tax advantages for certain corporate employees: it also discriminates against the self-employed and has had the undesirable result of encouraging large numbers of self-employed people to incorporate merely to secure the larger tax advantages available with respect to corporate retirement plans. This includes large numbers of professional people who are now permitted by all 50 States and the District of Columbia to incorporate.

In view of these considerations, the committee has provided the following three changes which should be regarded as one package in the sense that the adoption of all three changes are needed at the same time in order to improve the tax laws in regard to pension plans.

Equalizing tax treatment; individual retirement plans.—Your committee's bill allows individuals who are not receiving the advantages of current coverage under qualified retirement plans to take deductions for annual contributions to a new type of individual retirement plan, up to 20 percent of earned income or $1,500, whichever is less.

These retirement plans will be available to all employees who are not active participants in a qualified retirement plan, in a governmental pension plan or in an annuity plan established by a tax-exempt or public educational institution under section 403(b) of the Internal Revenue Code.[13] Self-employed individuals who are not covered by qualified retirement plans (H.R. 10 plans) are also eligible to establish individual retirement plans for themselves.

The employer of any individual who establishes a personal retirement plan will be allowed to make tax deductible contributions to that individual retirement account on behalf of the employee which will not be currently taxable to the employee so long as the sum of the employee's own deductible contribution and the employer's contribution do not exceed the allowable 20 percent of compensation—$1,500 annual limit. Unions may also establish individual retirement accounts for their members.

In order to encourage the widespread use of such individual retirement plans, your committee has provided that the contributions to such plans can be invested in a wide range of investments, including special government retirement bonds which would be issued for

[13] Such section 403(b) annuities confer most of the tax advantages associated with qualified pension plans.

this purpose, annuity contracts sold by insurance companies, mutual funds, corporate securities, banks and credit unions.

The earnings on the amounts put aside in the individual retirement accounts are to remain free of tax until they are distributed. Distributions from the individual retirement savings plans are to be taxable when received by the employee, generally upon retirement or upon death or disability. However, since the individuals' incomes will generally be relatively low when they receive such distributions, the latter will ordinarily be taxed at relatively low rates. Individuals will also enjoy tax savings from being able to defer payment of tax on the earnings of the retirement funds during the time they are retained in the tax-free plans.

Since the objective of the new provision is to encourage adequate provision for retirement needs, withdrawal of the retirement savings prior to age 59½ will result in a penalty tax equal to 10 percent of the amount of the premature distribution. However, early withdrawals are permitted without penalty where the taxpayer becomes disabled. In addition, to prevent the individual retirement savings plans from being used to postpone tax indefinitely, the retirement savings must either be distributed by the time the individual reaches age 70½ or distributed over the lives or life expectancy of the individual and his spouse beginning no later than age 70½.

Your committee anticipates that by encouraging employers to make modest contributions initially for the retirement needs of their employees, such individual retirement plans will lead eventually to the establishment of a significant number of new qualified retirement plans by employers. An employer who believes he cannot afford the entire cost of a retirement plan can start by contributing small amounts for employee individual retirement accounts, can increase his contributions over the years (providing it does not exceed the 20 percent-$1,500 annual limits per participant), and then can subsequently convert to an employer-financed qualified plan. The provisions allowing individuals to deduct contributions within the specified limits to individual retirement plans generally take effect for taxable years beginning after December 31, 1973.

Equalizing tax treatment; increasing deductions for H.R. 10 plans.—Your committee's bill grants self-employed people tax treatment with respect to retirement plans (H.R. 10 plans) which is more nearly comparable to that now accorded to corporate employees under qualified retirement plans. This is achieved by increasing the maximum deductible contributions a self-employed individual is allowed to make on his own behalf to a qualified plan from the present level of 10 percent of earned income up to $2,500 a year to 15 percent of earned income up to $7,500 a year. For H.R. 10 plans which are of the defined benefit type, provision is made for applying comparable limitations on the benefits that may be paid to self-employed individuals under regulations to be prescribed by the Secretary of the Treasury or his delegate.

In keeping with the major objective of securing more uniform tax treatment of self-employed people and corporate individuals under qualified retirement plans, contributions or benefits for self-employed people under qualified plans are also made subject to the same overall limitations that are placed on contributions or benefits for regular employees under qualified plans.

Your committee has also made provision to allow self-employed individuals, whose earned income fluctuates sharply, declining to low levels in some years, to continue to set aside a specified minimum amount regularly for retirement under an H.R. 10 plan. This is achieved by permitting a self-employed individual to deduct contributions to such plans amounting to $750 or 100 percent of their earned income, whichever is less, even though these amounts are in excess of the regular deduction limits.

The new more liberal limitations on contributions or benefits for self-employed people under qualified plans are also to apply to shareholder employees of subchapter S corporations (small business corporations) who are generally subject to the same limitations as self-employed people under qualified plans. This means, for example, that contributions of up to the lesser of 15 percent of earned income or $7,500 a year may be made under qualified defined contribution plans on behalf of such shareholder employees without giving rise to current tax for them.

In addition, provision is made to insure that self-employed individuals who wish to utilize the full maximum tax allowance for their own contributions will also provide significant pension contributions for their regular employees who are covered by the pension plan. This is achieved by allowing self-employed people to count no more than $100,000 of their earned income in computing pension contributions or benefits for themselves. This prevents a self-employed individual with an extremely large income from achieving the $7,500 maximum annual deduction for his own pension contribution through the use of a low contribution rate which would be detrimental to his employees since the pension contributions on their behalf are computed using the same contribution rate. For example, a self-employed individual who counts his first $100,000 of earned income for this purpose, must contribute to the plan at least 7.5 percent of the wages of his covered employees in order to be permitted a deductible contribution of $7,500 on his own behalf.

Finally, your committee adopted provisions to improve the effectiveness of H.R. 10 plans in achieving their retirement objectives and preventing abuses in the operation of such plans. Present law disqualifies the plan if willful contributions in excess of the allowable limits are made on behalf of owner-employees since such excess contributions unduly build up their tax-free accumulations in the plan. Experience has shown that this is not an adequate remedy since disqualification of the plan for excess contributions on behalf of owner-employees penalizes the regular employees who are not in any way responsible for the excess contributions. For this reason, instead of disqualifying the plan, where excess contributions are made on behalf of the self-employed individuals, the bill adopts a new more effective penalty, namely, a tax on the employer, amounting to 6 percent a year on the amount of the excess contribution. In addition, to discourage premature withdrawal of the H.R. 10 funds by owner-employees prior to retirement age, withdrawals before such individuals attain the age of 59½ (except in case of disability) are subject to an additional tax amounting to 10 percent of such premature contributions.

The new more liberal limits in regard to contributions on behalf of self-employed people under H.R. 10 plans are effective for taxable

years beginning after December 31, 1973. However, the new limits on benefits under defined H.R. 10 benefit plans (which are designed to secure comparability with the limitations applying to H.R. 10 plans of the defined contribution type) the 6-percent tax on excess contributions for self-employed individuals and the 10-percent tax on premature withdrawals by owner-employees are effective for taxable years beginning after December 31, 1975.

Overall limitations on contributions and benefits for employees under plans.—In view of the vital role that the favorable tax treatment accorded under the Internal Revenue Code plays in stimulating the growth and development of nondiscriminatory retirement plans, your committee believes that it is essential to continue this treatment. In fact, as noted above, the bill adopted by your committee extends the favorable tax treatment more generally by increasing the allowable deductible contributions of self-employed people under H.R. 10 plans and by providing for the establishment of limited retirement savings plans for individuals who are not covered by qualified retirement plans

However, after careful consideration, your committee has concluded that it is not in the public interest to make the substantial favored tax treatment associated with qualified retirement plans available without any specific limitation as to the size of the contributions or the amount of benefits that can be provided under such plans. The fact that present law does not provide such specific limitations has made it possible for extremely large contributions and benefits to be made under qualified plans for some highly paid individuals. While there is, of course, no objection to large retirement benefits in themselves, your committee believes it is not appropriate to finance extremely large benefits in part at public expense through the use of the special tax treatment. Moreover, the fact that there are no specific limits on the size of the contributions or benefits that may be made under qualified plans on behalf of highly paid employees discriminates against the self-employed whose contributions or benefits under H.R. 10 plans are limited by law. For this reason, your committee has provided specific limitations on the amount of contributions and benefits that can be provided for any one individual under a qualified plan. These limitations, which apply to both employees and self-employed people under qualified plans, have been designed to avoid abuse of the favored tax treatment to finance extremely large pensions. However, the limitations are generous enough to permit substantial retirement benefits which are adequate judged from any reasonable standard.

Under defined contribution plans (money-purchase pension plans and profit-sharing plans), the sum of the employer's contributions for the employee, a specified portion of the employee's own contributions, and any forfeitures allocated to the employee cannot exceed 25 percent of the employee's compensation or $25,000, whichever is less. These limits would also apply to contributions made to qualified plans of exempt organizations under section 403(b).

Your committee decided to take employee contributions to qualified plans into account for purposes of this contribution limit because the employee gets a tax advantage from the fact that the earnings on his contributions remain free of tax so long as they are kept in the plan, thus permitting a tax-free buildup of funds. However, unlike employer contributions under qualified plans, employee contributions are made

out of taxed income. For this reason, for purposes of counting employee contributions for purposes of the 25 percent and $25,000 annual limits on contributions on behalf of any employee under a defined contribution plan, there is to be excluded the greater of (a) employee contributions amounting to 6 percent of compensation or (b) one-half of the employee's contributions.

For plans which provide defined benefits, your committee has phrased the limit in terms of the amount of annual benefits that may be paid to a participant. More specifically, the annual benefit paid under such plans cannot exceed 100 percent of the participant's average compensation for his highest 3 years of earnings (regardless of the age at which the benefits start) or $75,000 beginning at age 55 or later, whichever is less. Where the annual benefit starts before age 55, the $75,000 annual limit on benefits is adjusted downward actuarially. However, avoid any possible adverse effect on individuals with relatively modest retirement benefits, this benefit limitation is not to apply to retirement benefits which do not exceed $10,000 for the plan year or for any prior plan year. This exception from the benefit limitation is available only where the employer has not at any time maintained a defined contribution plan in which the participant was covered.

While any specific dollar limit on the amount of benefits under qualified plans is necessarily a matter of judgment, your committee believes that the annual limitation of $75,000 at age 55 or later achieves a reasonable balance in view of the considerations involved. Benefits starting at any age are allowed to amount to as much as 100 percent of average pay during the high 3 years of earnings after study disclosed that any lower percentage limit would adversely affect individuals with relatively modest earnings who are covered under generous plans. Your committee believes that it would be unwise to discourage liberal benefits for such individuals.

As noted above, the $75,000 annual limit is applied to a benefit financed by the employer which is payable in the form of a straight life annuity beginning at age 55. Correspondingly, higher benefits may be paid to the extent that they are financed by employee contributions. No actuarial adjustment is required to be made in the maximum annual limit on benefits under defined benefit plans where ancillary benefits which are not related to retirement are provided. For example, no downward actuarial adjustment in the limit is to be required for disability benefits before normal retirement age. In addition, no downward adjustment is to be made for a normal joint and survivor feature.

Moreover, to prevent abuse, the full maximum benefit may be paid only to individuals who have 10 years or more of service. Where an individual has served for less than 10 years, the maximum permissible benefit is reduced proportionately.

The contribution and benefit limits are applied in a way which prevents any individual from securing higher limits for himself merely because he is covered by several retirement plans financed by the same employer. For purposes of applying these limits, all defined contribution plans established by an employer are combined and treated as one defined contribution plan, and all defined benefit plans established by an employer are combined and treated as one defined benefit plan.

Also, if an individual is covered by both a defined contribution plan and a defined benefit plan established by his employer, then an overall limit is applied to coordinate the two limits discussed above. In this case, the sum of (1) the percentage utilization of the maximum limit under the defined benefit plan and (2) the percentage utilization of the maximum limit under the defined contribution plan cannot exceed 140 percent. For example, if, under the defined benefit plan, the employee is to receive a pension of $75,000 a year (using up 100 percent of the defined benefits limit), then the maximum additions to his defined contributions plan may not exceed 40 percent of what would otherwise be his defined contributions limit. Put another way, this overall limit, if both types of plans are used equally, may be satisfied by using up 70 percent of the limits applicable to each type of plan.

Because of the vital importance of maintaining the real value of retirement benefits, the bill instructs the Secretary or his delegate, through regulations, to make annual adjustments in the allowable limits to take account of increases in the cost of living. This includes adjustments in the $75,000 annual limit to benefits paid by defined benefit plans, the $25,000 limit to contributions under defined contribution plans and, in the case of a participant who was separated from service with the firm, the amount of his average earnings in his highest compensated 3 consecutive years of service.

Your committee has provided adequate time for adjustment to the new limits on benefits and contributions under retirement plans. In general, these limits apply to contributions made or benefits accrued in years beginning after December 31, 1975. However, to ease the transition to the new rules, an active participant in a defined benefit plan on October 2, 1973, will be permitted to receive an annual benefit, based on his annual rate of compensation on that date and the plan provisions in effect on that date, which exceeds $75,000 a year, provided the benefit does not exceed 100 percent of his annual compensation on October 2, 1973. Where this "grandfather" treatment is utilized, the cost-of-living adjustments in the limits, described above, are not available.

Finally, because the objective of the limits on contributions and benefits is to keep the tax advantages associated with qualified plans within reasonable bounds and not to restrict the amount of retirement benefits that may be paid to individuals under other arrangements, the bill specifically indicates that nothing in the provisions relating to such limits (or in the provisions of the bill which relate to minimum funding standards) is to be construed to require the disqualification of any plan solely because additional benefits are provided to the employee under nonqualified portions of the plans.

Lump-sum distributions under qualified plans.—Prior to the Tax Reform Act of 1969, lump-sum distributions made by qualified pension plans were generally taxed as long-term capital gains. Such capital gains treatment, however, had the disadvantage of allowing employees to receive substantial amounts of deferred compensation in the form of lump-sum pension distributions at more favorable tax rates than other compensation received currently. The 1969 Tax Reform Act sought to ameliorate this problem by providing that any part of such lump-sum distributions which represented employer contributions accrued in plan years beginning after 1969 was to be taxed

as ordinary income rather than as capital gains. In addition, the 1969 Act provided a special 7-year averaging procedure for the portion of the lump-sum distribution taxed as ordinary income.

However, while the 1969 provisions were intended to provide more equitable treatment for such lump-sum pension distributions, they have not achieved their purpose. The Treasury has had great difficulty in providing regulations to carry out this provision. Problems have arisen both in determining the amount of the ordinary income element of a distribution and in determining the precise amount of tax imposed on account of the "ordinary income" element. Moreover, in practice the new proposed regulations have proved to be very complex and it is frequently maintained that individuals receiving lump-sum distributions have been unable to compute their taxes and that accountants and tax lawyers have been refusing to attempt the computations.

Your committee believes that this situation cannot be permitted to continue. For this reason, it has provided a new method of taxing such lump-sum pension distributions which is relatively simple and yet at the same time equitable. Under the new provision, that portion of the distribution representing pre-1974 value receives capital gains treatment. The balance of the lump-sum distribution is to be taxed as ordinary income under a separate tax schedule (the tax schedule applicable to single people) generally without reductions, exclusions, or consideration of the taxpayer's other income. However, to insure that the tax paid by lower income individuals on their lump-sum distributions will generally not be more than under present law, a special minimum distribution allowance is provided under the separate tax rate schedule. In addition, averaging relief is provided for the portion of the lump-sum distribution which is taxed as ordinary income under the separate tax rate schedule by providing 10-year averaging for such income. This in effect provides a tax payable at the time of the distribution, but no greater in amount than the taxpayer could expect to pay were the income to be spread over his remaining life expectancy.

The new treatment of lump-sum distributions from qualified retirement plans is to apply to distributions made after December 31, 1973, in taxable years beginning after that date.

Salary reduction plans.—Under present law, employee contributions to qualified retirement plans are generally made out of taxed income without any tax allowance. However, in certain cases, employees have entered into arrangements with employers to accept salary reductions in return for contributions on their behalf to qualified retirement plans. If employer contributions to such plans are not taxed currently to the covered employees, this results in tax advantages for the covered employees as compared with making their own contributions to the retirement plan. Until the latter part of 1972, the Internal Revenue Service under administrative rulings recognized such salary reduction plans, providing that the amount of the reduction was not in excess of 6 percent of compensation and the plan met certain antidiscrimination requirements.

However, on December 6, 1972, the Internal Revenue Service issued proposed regulations (37 Fed. Reg. No. 235, p. 25938) providing that amounts contributed by an employer to a retirement plan in return for a reduction in the employee's basic or regular compensation or in

lieu of an increase in such compensation are to be considered to have been contributed by the employee and consequently be taxable income to the employee.[14]

The proposed regulations dealing with salary reduction plans raise major issues of tax policy. The basic question is the extent to which employees should be allowed to convert what would otherwise be a nondeductible employee contribution to a retirement plan to tax-deferred employer contributions on their behalf. This, in turn, involves issues regarding the equitable treatment under the tax laws of employee contributions and employer contributions to qualified retirement plans.

In view of these basic issues, your committee has concluded that it would be desirable for the Internal Revenue Service to defer action on its regulations until the Congress has had further opportunity to consider this matter. For this reason, the bill directs the Secretary of the Treasury to withdraw the proposed salary reduction regulations issued on December 6, 1972. Moreover, no other salary reduction regulations may be issued in proposed form before January 1, 1975, or in final form before March 16, 1975. The bill further specifies that until new salary reduction regulations have been issued in final form, the law with regard to salary reduction plans is to be administered along the lines of the administration before January 1, 1972. Any salary reduction regulations which become final after March 15, 1975, for purposes of individual income tax, are not to take effect before January 1, 1975.

Labor unions providing pension benefits.—Your committee considered a provision recognizing the right of tax-exempt labor unions to provide pension benefits to its members from funds derived from members' contributions and the earnings on the contributions, without affecting their tax-exempt status. However, the committee concluded that labor unions are permitted to provide benefits in this manner under present law and as a result it decided such a provision is unnecessary. The Internal Revenue Service has recognized this result in a published ruling which provides "that payment by a labor organization of death, sick, accident or similar benefits to its individual members with funds contributed by its members, if made under a plan which has as its object the betterment of the conditions of the members does not preclude exemption of the organization under section 501(c)(5) of the code."[15]

III. REVENUE EFFECT

There are several kinds of revenue effects which can be expected to arise from H.R. 12855. These are summarized in table 4.

First, three provisions designed to equalize the tax treatment of pensions have an impact on tax deductions. These are the provisions raising the maximum deductible amount that the self-employed can set aside annually for their retirement; making provision for employee

[14] This ruling did not affect annuities provided employees of tax-exempt charitable, educational and religious organizations and employees of public educational institutions under section 403(b) of the Internal Revenue Code.

[15] Revenue Ruling 62–17, 1962–1, Cum. Bull. 87.

retirement savings deductions for those not now covered under qualified retirement plans, government plans, or section 403(b) plans; and a provision which limits the maximum retirement benefit and the maximum deductible contribution on behalf of employees.

Tax revenues are also affected by the modification of the tax treatment of lump-sum distributions.

Finally, a third category of revenue effect from the bill arises not because of any change in tax deductions as such, but rather because increased amounts may be set aside by employees for vesting and funding. The bill imposes additional requirements in the areas of vesting and funding which must be met if the present favorable treatment for pensions is to continue to be available. These new requirements may result in employers making larger contributions to retirement plans, resulting in larger income tax deductions.

TABLE 4.—*Estimated annual revenue effect of H.R. 12855 at 1973 levels of income and employment*

	Millions
I. Provisions designed to equalize tax treatment under pension plans:	
Increase in maximum annual deductible contribution by the self-employed under H.R. 10 plans to the greater of $750 (but not in excess of earned income) or 15 percent of earned income up to $7,500 [1]	−$175
Allowing an individual not covered by a qualified retirement plan, government plan, or section 403(b) plan to deduct annually up to the lesser of $1,500 or 20 percent of compensation for contributions by him or on his behalf to a tax exempt retirement account, annuity, or bond plan established by him or to certain trusts established by employers or associations of employees (long-run effect) [2]	−355
Limiting the maximum annual benefit under defined benefit plans to the lesser of $75,000 (where benefits begin at age 55 or later) or 100 percent of average compensation for the three consecutive calendar years aggregating the highest compensation and limiting annual contributions under defined contribution plans to the lesser of $25,000 or 25 percent of compensation, with a cost-of-living adjustment to the dollar ceilings in the case of active participants and to the resultant amount under the 100 percent rule in the case of participants separated from service [3]	+10
Total, provisions designed to equalize tax treatment under pension plans	−520
II. Revised tax treatment of lump-sum distributions from retirement plans (long-run effect) [4]	+60
III. Revenue effect of minimum vesting provision. [5]	
Case 1: Assuming that the additional employer contributions to pension plans resulting from the minimum vesting requirement constitute a substitute for cash wages	−130
Case 2: Assuming that the additional employer contributions to pension plans resulting from the minimum vesting requirement constitute an addition to cash wages	−265
Case 3: Assuming that benefit levels of pension plans are adjusted downward to absorb the additional employer contributions to pension plans resulting from the minimum vesting requirement	0

NOTE.—There will be some revenue loss from funding but data are not available to determine the extent of this loss.

[1] Maximum deductible amounts effective for taxable years beginning after Dec. 31, 1973; other provisions effective for taxable years beginning after Dec. 31 ,1975.

[2] Maximum deductible amounts effective for taxable years beginning after Dec. 31, 1973; other provisions effective on Jan. 1, 1974.

[3] Apart from the exception for certain active participants in corporate defined benefit plans on Oct. 2, 1973, effective for contributions made or benefits accrued in years beginning after Dec. 31, 1975.

[4] Effective for distributions or payments made in taxable years beginning after Dec. 31, 1973.

[5] Effective for plan years beginning after the date of enactment for plans adopted after Jan. 1, 1974. Effective for plan years beginning after Dec. 31, 1975, for plans in existence on Jan. 1, 1974, except: (1) for plans under collective bargaining agreements, effective for plan years beginning after the agreement termination date (but not before Dec. 31, 1975) of the last agreement relating to the plan or Dec. 31. 1980, whichever is earlier; (2) for labor organization plans, effective for plan years beginning after the date of the second convention of the organization (but not earlier than Dec. 31, 1975) held after the date of enactment or Dec. 31, 1980, whichever is earlier; and (3) where the plan administrator elects, effective for plan years beginning after the date of enactment but before the latest date available to each of the above categories of existing plans, respectively.

Provisions designed to equalize tax treatment of retirement plans.—It is estimated that the provision increasing the maximum annual deductible pension contribution by self-employed persons on their own behalf to the greater of $750 (but not in excess of earned income) or 15 percent of earned income (up to $7,500) will result in an annual revenue loss of $175 million.

The provision allowing an individual not covered by a qualified retirement plan, government plan, or section 403(b) plan to deduct annually the lesser of $1,500 or 20 percent of compensation for contributions by him or on his behalf to a tax exempt retirement account, annuity, or bond plan established by him (or to certain trusts established by employers or associations of employers) is estimated to involve a revenue loss amounting to $225 million for 1974 and rising to $355 million for 1977 (at 1973 income levels).

On the other hand, a revenue increase of $10 million a year at 1973 income levels is estimated to result from limiting the maximum annual benefit under defined benefit plans to the lesser of $75,000 (where benefits begin at age 55 or later) or 100 percent of average compensation for the three consecutive calendar years aggregating the highest compensation and limiting annual contributions under defined contribution plans to the lesser of $25,000 or 25 percent of compensation, with a cost-of-living adjustment to the dollar ceilings in the case of active participants and to the resultant amount under the 100 percent rule in the case of participants separated from service.

Altogether, when fully effective, these three provisions involve an estimated annual net revenue loss of $520 million.

Tax treatment of lump-sum distributions.—The revised tax treatment of lump-sum distributions from retirement plans (which provides for taxing that part of lump-sum distributions which is attributable to 1974 and later years as ordinary income subject to 10-year averaging) is expected to result in the long run in annual revenue gains amounting to $60 million a year based on 1973 levels of income.

Revenue effect of minimum vesting and funding provisions.—The new minimum vesting standards, which generally become effective for plan years beginning after 1975, will also involve an indirect loss of revenue, ranging from zero to an estimated $265 million a year (at 1973 income levels).

The minimum vesting requirement involves little or no revenue loss to the extent that the benefit levels of plans are adjusted to absorb the increased employer costs resulting from the requirement. This is because, in that event, the requirement would have no effect on the deductions taken for contributions to plans or on the taxable income of covered employees. If the additional amounts required to be contributed to pension plans as a result of the vesting standards are a substitute for cash wages, rather than a net addition to cash wages, the annual revenue loss is estimated at $130 million. This could occur, for example, if the additional employer payments into the pension plan are taken into consideration in setting future wage increases. In this event, the revenue loss results from the fact that the covered employees are permitted to postpone payment of tax on the employer contributions involved, instead of being required to pay tax currently, as would be the case had they received an equivalent amount of wages. Some part of this postponed $130 million of taxes presumably will be recovered in the future in tax payments on the benefits paid out by the plan.

The upper range of the estimate, $265 million, represents the revenue loss if it is assumed that the additional employer payments into the pension plans required by the new vesting standards constitute an

addition to the cash wages that will be paid in any event. In this case employers will have larger total wage bills (for the sum of cash wages and wage supplements) and hence will take larger tax deductions, giving rise to a $265 million revenue loss.

It appears that realistically there is likely to be a combination of the three effects suggested above.

No revenue estimate is given for the increased funding requirements under the bill. Data are not available which would make a reliable estimate of this type possible. However, it is believed that the minimum funding requirements will have a relatively modest revenue effect.

IV. GENERAL EXPLANATION

A. Participation and Coverage

(Secs. 1011, 1015, 1017, 1021, and 1023 of the bill and Secs. 401, 410, and 414 of the Code).

PLAN PARTICIPATION—AGE AND SERVICE REQUIREMENTS

Present law

The Internal Revenue Code does not generally require a qualified employer pension, profit-sharing, stock bonus, annuity, or bond purchase plan to adopt any specific age or service conditions for participation in the plan.[1]

Existing administrative practice allows plans to exclude employees who (1) have not yet attained a designated age or (2) have not yet been employed for a designated number of years, so long as the effect is not discriminatory in favor of employees who are officers, shareholders, supervisors, or highly compensated employees. Also, under administrative practice, a plan may exclude employees who are within a certain number of years of normal retirement age (for example, 5 years or less) when they would otherwise become eligible, if the effect is not discriminatory.

On the other hand, in the case of a plan benefiting owner-employees,[2] the plan must provide that no employee with 3 or more years of service may be excluded (sec. 401(d)(3)).

However, all plans may exclude part-time employees whose customary employment does not exceed 20 hours a week, and seasonal employees whose customary employment does not exceed five months in any calendar year.

General reasons for change

The committee believes that, in general, it is desirable to have as many employees as possible covered by private pension plans and to begin such coverage as early as possible, since an employee's ultimate pension benefits usually depend to a considerable extent on the num-

[1] As described below (2. Plans Where a Collective Bargaining Unit is Involved: Other Anti-discrimination Provisions), a qualified plan must meet certain coverage standards. Several of the alternative standards require certain percentages of employees, or of eligible employees, to be covered by the plan, but in such cases the employer is permitted to exclude employees who fail to meet the plan's service requirements, not exceeding five years of service.

[2] An owner-employee is a sole proprietor or a partner with a greater than 10-percent interest in capital or profits (sec. 401(c)(3)).

ber of his years of participation in the plan. This is particularly important for employees who, because of the nature of their employment, shift from employer to employer over their working careers. In addition, early participation tends to spread the cost of providing employees with adequate pensions more evenly over the various firms for which the employee has worked over his entire working career, instead of concentrating the cost on his last few employers.

Of course, the general desirability of early participation must be balanced against the cost involved for the employer. Also from an administrative standpoint, it is not desirable to require coverage of transient employees, since benefits earned by short-term employees, in any case, are quite small. On the other hand, the committee believes that overly restrictive age and service eligibility requirements can arbitrarily frustrate the effective functioning of the private pension system. In view of these considerations, the committee has concluded that it is appropriate to specifically limit age and service eligibility requirements which an employer may incorporate in a qualified pension plan.

Explanation of provisions

In general.—In view of the considerations outlined above, the committee bill provides that a plan which is qualified under the Code is not to require, as a condition of participation, more than one year of service, or an age greater than 25 (whichever occurs later).[3] The committee believes that this rule will significantly increase coverage under private pension plans, without imposing an undue cost on employers. From an administrative point of view, however, the rule will allow the exclusion of employees who, because of youth or inexperience with the job in question, have not made a career decision in favor of a particular employer or a particular industry. Also, to encourage plans which provide 100 percent immediate vesting, the committee bill provides that such plans may require 3 years of service (and on age of 25) as a condition of participation. The committee believes that these rules take full account of the reasonable administrative and cost needs of plans to exclude employees in high turnover or high cost of benefit categories, and there is no authority in the tax law, apart from the specific provisions of the bill (including the maximum age provision discussed below), to allow qualified plans to exclude employees on account of age or service.

Year of service defined.—For purposes of the vesting and participation rules, the committee bill provides flexibility by indicating that the Secretary is to define a "year of service" by regulations in a manner which provides for its determination on a reasonable and consistent basis. For example, the regulations could specify that a plan could provide that each employee who had met the age and service requirements was to begin his participation on the anniversary date of his own employment, or that all eligible employees would be admitted on the anniversary date of the plan, or that each employee would be covered under the plan on the first quarterly anniversary date of the plan following the anniversary date of his employment.

[3] This rule applies whether or not the plan is a trusteed plan. That is, a plan funded through purchase of annuities from an insurance company is subject to these rules, as is a plan with investments managed by a trustee.

However, to ensure that no abuse situation arises, the bill provides certain guidelines as to what constitutes a "reasonable" definition of a year of service. For example, under the bill, the plan's definition of a year of service would have to be such that no employee with more than 17 months of continuous [4] service could be excluded from the plan on account of service; moreover, the average employee (assuming hypothetically that employees were hired at the same rate each day throughout the year) could not have a wait of more than 12 months for participation. Of course this definition does not apply for purposes of benefit accrual, and a plan may use any reasonable definition of "year of service" for this purpose that is consistently applied, so long as the plan meets the antidiscrimination requirements of the law.

There are some industries whose normal work schedules are substantially different than those of more typical businesses. To deal with this problem, the committee bill provides that the regulations defining "year of service" are to take this factor into account. For example, the regulations might provide that in appropriate cases 100 hours of employment constitute a month, or 1,000 hours of employment constitute a year.

Participation of temporary and seasonal employees.—In the case of the seasonal employee, whose customary employment is at least 5 months, his normal season will be treated as a year. For example, if there is a 5-month fishing season in a certain area, and a fisherman is employed throughout the season by a company having a qualified pension plan, then, on the anniversary date of his employment, the fisherman is to be treated under the plan as though he had at least twelve months of continuous service for purposes of determining his right to participate in the plan.

Break in service.—The bill also provides a series of rules as to the effect of an employee terminating his service with an employer but then subsequently returning. These determinations are used in deciding whether the vesting schedule is to start over after the participant's break in service or to continue as of its status when the break in service first occurred. The rules governing the treatment of breaks in service set forth below in general are designed to place the employee, when he returns to service, at the same point in the vesting schedule that he was before the break in service, insofar as this is practicable without creating serious administrative problems. The bill provides for four interrelating rules.

First, where a break in service has occurred, a plan can provide that where an employee subsequently returns to service, the earlier service is not added to the more recent service until the employee has been back at least a year. This rule makes it unnecessary to search out the extent of prior service in the case of employees who return but stay for only a short period of time.

A second rule provides that where an employee has been in service at any time in the past for a sufficiently long period of time to obtain a vested right to 50 percent or more of the accrued benefits from employer contributions, upon return to employment his prior service,

[4] The term "continuous" is also to be defined in regulations to take account of the problem of seasonal employees, as well as factors such as sick leave, holidays and vacation periods, etc.

before the break in service, is to be taken into account in applying the participation and vesting rules to his current situation. (The prior service would satisfy the plan's service requirements for participation.) The first rule set forth above, however, provides an exception to this rule.

Third, in the case of an employee who has completed 4 consecutive years of service before the break in service occurs, except as provided in the first rule above and the fourth rule below, service before the break is to be taken into account upon the employee's return to employment.

Fourth, in the case of an employee who has a break in service for a period of six years or more, service performed by the employee before the break in service need not be taken into account under the plan except in the case of employees coming under the second rule set forth above—that is, only where an employee has a vested right to 50 percent or more of employer contributions. Thus, where longer breaks in service occur, it will not be necessary to take into account prior service except in those cases where the employee had previously built up vested rights to the level of 50 percent or more.

Other rules.—The committee intends that Treasury regulations specify the extent to which service with a predecessor of the employer is to be counted for purposes of the eligibility requirements. In the case of a multiemployer plan, service with any employer who was a member of the plan is to be counted towards an individual's participation requirement (sec. 1015 of the bill).

For purposes of these rules (and elsewhere in the bill), a "multiemployer plan" is a plan maintained pursuant to a collective bargaining agreement, to which more than one employer is required to contribute, and to which no one employer makes as much as 50 percent of the contributions. (After a plan has once qualified as a multiemployer plan, however, up to 75 percent of the contributions may be made by a single employer without affecting the multiemployer status of the plan.) In addition, the Secretary of his delegate is authorized to prescribe regulations establishing certain other requirements in the case of a multiemployer plan, dealing, for example, with the extent to which the plan should be liable to make benefit payments to participants, regardless of whether the participant's employer continues to make contributions under the plan.

Maximum age requirement.—In order not to discourage the hiring of older employees, the bill would permit a defined benefit pension plan to exclude employees who are within 5 years of normal retirement age at the time they would otherwise become eligible to participate if the exclusion does not result in a situation which is inconsistent with the coverage requirements of the tax law. Also, the plan may provide that the employee is not eligible to begin drawing retirement benefits until 10 years after he began to participate in the plan of participation (sec. 1021 of the bill). If a maximum age provision were to be prohibited, in the case of a defined benefit plan the cost considerations of providing a defined benefit to an older employee might discourage the hiring of the elderly. In the case of a defined contribution plan (such as profit-sharing plan or a money purchase pension plan), however, these cost considerations do not generally apply, and the committee therefore did not see why a maximum age limitation of this type should be permitted.

H.R. 10 plans.—The provisions of present law with respect to coverage under an owner-employee (H.R. 10) plan are not changed by the committee's bill. Present law already requires relatively early participation (after 3 years of service) and 100-percent immediate vesting in the case of owner-employee plans. The committee concluded that the retention of these provisions of present law was needed to protect the rights of employees in such cases. H.R. 10 plans will use the same rules as to a year of service, seasonal or part-time service, and breaks in service as will apply under the committee bill to corporate plans.

Government and church plans.—These provisions (as well as the corresponding provisions of the bill relating to vesting and funding) do not apply in the case of government plans, including the Federal civil service plan, and plans sponsored by State and local governments (including the District of Columbia), and any plan to which the Railroad Retirement Act applies. These plans may continue to remain qualified by continuing to meet the current law requirements (as in effect on the day before enactment). Also, new government plans may be qualified if they meet the requirements of present law. However, the Committee on Ways and Means and the Committee on Education and Labor are to study the extent to which it would be desirable to bring government plans under Federal participation, vesting, funding, and fiduciary standards, as well as matters affecting mobility of government employees and those employed under Federal procurement, construction, or research contracts or grants. The committees are to report to the House of Representatives no later than December 31, 1976.

Likewise, church plans (and plans of associations or convention of churches) will be exempt from the requirements of the bill unless the church files an election, in a form and manner to be prescribed in regulations, electing to come under the participation, vesting, and funding provisions of the bill (and the other rules which relate to these provisions), rather than to comply with the requirements of present law. Once an election is filed, however, it will be irrevocable. Generally, a "church plan" includes any plan maintained by a church or association or convention of churches, other than a plan primarily for benefit of employees in an unrelated trade or business of the church, or a multiemployer plan which includes employers which are not churches. However, for purposes of this definition of "church plan", if the plan was in existence on January 1, 1974, and at that time covered employees of another organization exempt from tax (under sec. 501) which was an agency of the church, then employees of the agency are to be considered as employees of the church.

Coordination of regulations.—In order to minimize administrative problems, and ensure insofar as possible that plans which satisfy the requirements of the Internal Revenue Code also meet the pension standards which are to be administered by the Labor Department, and vice versa, the bill provides that the Treasury regulations with respect to the participation, vesting, and funding requirements of the bill (other than regulations to enforce the antidiscrimination requirements of sec. 401(a)(4) of the code) are to be effective for plan years beginning after December 31, 1975, only if approved by the Secretary of Labor. Where the bill's provisions apply before that date (as in the case of new plans and plans which elect earlier dates) then the regulations

may be prescribed without the necessary approval of the Secretary of Labor. However, these regulations are not to apply beyond the December 31, 1975, plan year cutoff date.

PLANS WHERE A COLLECTIVE BARGAINING UNIT IS INVOLVED; OTHER ANTIDISCRIMINATION PROVISIONS

Present law

Under present law (sec. 401(a)(3)), a qualified retirement plan must cover either (1) a specified percentage of all employees (generally, 70 percent of all employees, or 80 percent of those eligible to benefit under the plan if at least 70 percent of all employees are eligible) [5] or (2) such employees as qualify under a classification which is found by the Internal Revenue Service not to discriminate in favor of employees who are officers, shareholders, supervisors, or highly compensated employees. (A plan is not *per se* discriminatory for purposes of these rules merely because it is limited to salaried or clerical employees.)

Also, under present law, either the contributions or the benefits provided under a qualified plan must not discriminate in favor of employees who are officers, shareholders, supervisors, or highly compensated employees.

General reasons for change

Where employees covered under a collective bargaining unit prefer current compensation or some other form of benefits to coverage under a pension plan, employers sometimes are unable to establish a plan for other employees because the percentage requirement cannot be satisfied if the bargaining unit employees are not covered. It is then necessary for the plan to qualify as one which has coverage requirements that do not discriminate. The Service's approach (see Rev. Rul. 70-200, 1970-1 CB 101), which has generally been upheld by the courts, has been to look at the compensation of the group which is covered under the plan, and to allow the plan to qualify if the compensation of most of the participants is substantially the same as that of the excluded employees, the plan covers employees in all compensation ranges, and employees in the middle and lower ranges are covered in more than nominal numbers. Where most of the lower-paid nonsupervisory personnel are members of a collective bargaining unit which elects not to be covered by a pension plan, the remainder of the employees may include relatively large percentages of supervisors or highly compensated employees. As a result, under present law it may be impossible—because of the antidiscrimination requirements—to establish a qualified plan for the remaining employees.

Your committee believes that this situation can result in a hardship, where nonunion employees of an employer are forced to forego the benefits of a pension plan merely because those employees who are covered under a collective bargaining agreement choose nonpension benefits, or nonpension benefits plus pension benefits at a lower level than those provided nonunion employees. At the same time, the committee is

[5] In applying these numerical tests under present law, there are excluded employees who have been employed not more than a minimum period prescribed by the plan (up to 5 years), part-time employees (customary employment for not more than 20 hours in any one week), and seasonal employees (those whose customary employment is for not more than 5 months in any calendar year).

concerned that any change in the law should not result in a situation where an employer might be able to exclude these employees from the pension plan without compensation for this in the form of other types of benefits. To deal with this situation, the committee bill provides that collective bargaining employees may be excluded for purposes of applying the coverage test, where the agreement does not provide that the union employees are to be included in the plan and there is evidence that retirement benefits have been the subject of good faith bargaining between the union employees and the employer.

Explanation of provisions

Collective bargaining unit.—The committee bill eases the application of the provisions of existing law by providing that employees covered under a collective bargaining agreement can be excluded for purposes of the coverage requirement if the employees are excluded from the plan and there is evidence that the retirement benefits have been the subject of good faith bargaining between the union employees and the employer.

If pension plan coverage had been discussed with the representatives of the union employees and no pension coverage was provided, either because the union employees were covered under a union plan (which might or might not offer comparable benefits to those provided under the employer plan), or because the employee representatives opted for higher salaries, or other benefits, in lieu of pension plan coverage, or for some other valid reason, then it would be permissible to exclude those union employees from the calculations. In effect, the collective bargaining agreement employees could then be excluded from the plan. Since this provision is intended to relax the coverage requirements of present law, in circumstances where the union employees elect not to participate in the plan, it follows, of course, that any plan which meets the coverage rules of present law, even though it excludes certain union employees, would not be adversely affected as to its tax-qualified status by this provision.

The committee anticipates that in any case where collective bargaining unit employees were excluded from a plan under this provision, the Internal Revenue Service will receive information as to the justification for the exclusion before ruling that the plan is qualified. There is no requirement that the collective bargaining agreement specifically state that the employees have elected to be out of the plan or to take a lower level of benefits. However, there must be evidence that the retirement benefits have been the subject of good faith bargaining between the union employees and the employer.[6]

The committee bill also provides that a plan is not to be considered discriminatory because it covers air pilots represented in accordance with the Railway Labor Act while not covering other employees working for the same employer if it covers a sufficient number or a nondiscriminatory cross-section of such pilots.

Nonresident alien employees.—The bill provides for the exclusion, for purposes of applying the coverage requirements and the antidiscrimination requirements, of those employees who are nonresident

[6] Once this issue had been negotiated, the union and the employer would not be required under this provision to renegotiate the issue at each bargaining session. However, the committee has been informed that it would constitute an unfair labor practice, within the meaning of the Federal labor laws, for an employer to refuse to negotiate in good faith with a labor union concerning retirement benefits. An example of good faith bargaining would include agreements or memoranda of understanding between railway companies and their employee representatives designed to effect changes in the Railroad Retirement Act of 1937 or Chapter 22 of the Internal Revenue Code, or both.

aliens with no United States income from the employment in question. It was believed that the United States tax laws should not impede appropriate pension plan benefits for United States citizens or persons with United States earned income, merely because comparable benefits were not afforded to nonresident aliens with no United States income from the employment in question. Also, the mere processing of such cases would take an inordinate amount of time because of the complexity of applying rules to integrate the appropriate foreign equivalent of Social Security with the benefits or contributions provided by the employers under such plans.

Affiliated employers.—The committee bill also provides that in applying the coverage test, as well as the antidiscrimination rules, the vesting requirements, and the limitations on and benefits, employees of all corporations who are members of a "controlled group of corporations" (within the meaning of sec. 1563(a)) are to be treated as if they were employees of the same corporation. Thus, if two or more corporations were members of a parent-subsidiary, brother-sister, or combined controlled group, all of the employees of all of these corporations would have to be taken into account in applying these tests. A comparable rule is provided in the case of partnerships and proprietorships which are under common control (as determined under regulations), and all employees of such organizations are to be treated for purposes of these rules as though they were employed by a single person. The committee, by this provision, intends to make it clear that the coverage and antidiscrimination provisions cannot be avoided by operating through separate corporations instead of separate branches of one corporation. For example, if managerial functions were performed through one corporation employing highly compensated personnel, which has a generous pension plan, and assembly-line functions were performed through one or more other corporations employing lower-paid employees, which have less generous plans or no plans at all, this would generally constitute an impermissible discrimination. By this provision the committee is clarifying this matter for the future. It intends that prior law on this point be determined as if this provision had not been enacted.

At the same time, however, the committee provision is not intended to mean that all pension plans of a controlled group of corporations or partnerships must be exactly alike, or that a controlled group could not have pension plans for some corporations but not others. Thus, where the corporation in question contains a fair cross-section of high- and low-paid employees (compared to the employees of the controlled group as a whole), and where the plan coverage is nondiscriminatory with respect to the employees of the corporation in question, it is anticipated that the Internal Revenue Service would find that the plan met the antidiscrimination tests, even though other corporations in the controlled group had a less favorable retirement plan, or no plan at all. On the other hand, if, looking at the controlled group as a whole, it were found that a disproportionate number of highly compensated employees were covered under the plan of the corporation in question, or that the average compensation of covered employees was substantially higher in that plan than the average compensation of noncovered employees, it would be anticipated that the plan would not be

found to be qualified, because the corporation does not contain a fair cross section of the controlled group employees.

Supervisory employees.—Under the committee bill, the category of "supervisors" is to be dropped from the list of personnel which a plan may not discriminatorily favor. The committee has been informed by the Treasury Department that all persons who are supervisors within the intent of present law also are officers, shareholders, or highly compensated employees, and that as a result this deletion will result in no substantive change in the antidiscrimination provisions of present law.

Coverage of temporary and seasonal employees.—In applying the coverage rules, the bill makes several changes from present law. In applying the 70 percent and 80 percent coverage tests, employees who fail to meet the minimum age and service requirements prescribed by the plan may be excluded (assuming these employees are actually excluded from the plan). These requirements may not be more than the top limit of one-year-service and 25-year-age requirements (or 3-year-service, immediate-full-vesting, and 25-year-age alternative) described above with respect to participation. Of course, the plan may provide lesser age and service requirements.

Present law permits exclusion, in applying the coverage calculations, of employees whose customary employment is for not more than 5 months in any calendar year; the bill retains the 5-month period but permits computations to be made on the basis of any 12-month period (not merely the calendar year) depending upon the period specified in the plan itself. Part time employees (as defined in regulations) may also be excluded from the plan.

Work product contributions.—In some industries, contributions may be made under a plan based on the work product of an individual who is not a participant (for example, contributions based on tonnage of minerals mined or processed). Obviously, such an individual may be excluded under the plan, notwithstanding the fact that contributions are made based on his work, if the individual fails to meet the minimum age or service requirements, or other lawful conditions that the plan imposes for participation. On the other hand, a person could be a participant in a plan even though neither he nor his employer make contributions on his behalf.

Effective dates

These provisions apply generally to plan years beginning after the date of enactment of the bill. However, to allow time for amendment for plans in existence on January 1, 1974, the provisions are to take effect in these cases for plan years beginning after December 31, 1975, unless the plan administrator makes an irrevocable election to have the provisions apply sooner (under regulations prescribed by the Secretary or his delegate), in which case the provisions will take effect at the beginning of the first plan year which occurs after the election.

Where the plan is subject to the provisions of a collective bargaining agreement in effect on January 1, 1974, the effective date is further postponed until plan years beginning after December 31, 1976, or, if later, plan years beginning after the expiration of the collective bargaining agreement (or the expiration of the last relevant agreement in the case of a multiemployer plan or a single plan subject to more than one collective bargaining agreement), but without regard to any ex-

tension made after the date of enactment. For this purpose, a collective bargaining agreement will not be considered as terminated if it can be (or is) reopened with respect to relatively narrow issues only. For example, a collective bargaining agreement would not be considered as being terminated for this purpose if it can be reopened with respect to the benefit payable to a surviving spouse, if it can be reopened because of a change in payments with respect to voluntary coverage under Part B of the Medicare benefits under the Social Security Act, or if it can be reopened to increase benefits with respect to a quite limited group of employees.

A question has arisen as to how the effective date rules are to be applied to a plan which includes employees subject to one or more collective bargaining agreements and also employees not under any such agreement. The intent is that the presence of an insignificant number of union members as participants in a plan is not to be sufficient to delay the effective dates for an additional 5 years. On the other hand, the presence of a small number of nonunion participants should not force the untimely renegotiation of labor-management contracts. As a result, your committee intends that a plan is to be regarded as maintained pursuant to a collective bargaining agreement if (1) either the contribution levels or the benefit levels under the plan are to be determined under the agreement and (2) at least 25 percent of the participants are members of the unit of employees covered by the agreement. In addition, where an employer has one plan for collective bargaining unit employees and another plan for other employees, but those plans are essentially the same with regard to benefits and contributions, then the two will be considered as one for purposes of applying the rule described above as to when a plan with both union and nonunion participants is to be entitled to delayed effective date provisions. Finally, where an employer has a plan for collective bargaining unit employees and another plan for other employees, and the second plan consists of two parts, one part of which is essentially the same as that for the collective bargaining employees, the part which is essentially the same will be considered as a part of the collective bargaining plan for purposes of this effective date provision.

In the case of a plan maintained by a tax-exempt (under sec. 501 (c)(5)) labor organization for its own employees, the effective date is postponed to plan years beginning after December 31, 1976, or, if later, the first plan year following the date on which the second convention of the organization is held after the date of enactment. But, in any event, all plans (including those subject to existing collective bargaining agreements) are to be subject to these provisions in plan years beginning after December 31, 1980.

An existing plan which would be entitled to a delayed effective date for the new participation, vesting, funding, etc. provisions is to be permitted to elect to have all those provisions apply sooner. Any such election must be made under Treasury regulations, must not be piecemeal (i.e., it is not permitted to be made for, say, vesting, without also applying to participation, funding, etc.), and is irrevocable.

Revenue effect

The revenue effect of these provisions is expected to be minimal.

B. Vesting

(Secs. 1012, 1014, 1015, 1017, 1021, 1023, and 1024 of the bill and secs. 401, 411, 414, and 6690 of the Code.)

Present law

Plans which qualify under the Internal Revenue Code are now required to provide vested (i.e., nonforfeitable) rights to participating employees when they attain the normal or stated retirement age. Employees must also be granted vested rights if the plan terminates or the employer discontinues his contributions.

However, qualified corporate plans are generally not required to provide vested rights to participating employees before normal retirement age unless this is considered to be necessary—in view of the likely pattern of employee turnover—to prevent discrimination against the rank and file employees in favor of officers, shareholders, supervisors, or highly paid employees. In other words, preretirement vesting is required only where its absence would cause discrimination in favor of officers, etc., who could be expected to remain with the firm long enough to retire and qualify for benefits, while the rank and file employees would continually be separated from the firm and lose their benefits.

Under an owner-employee plan,[1] the rights of all employees must vest in full as soon as they become participants (sec. 401(d)(2)(A)).

General reasons for change

Unless an employee's rights to his accrued pension benefits are nonforfeitable, he has no assurance that he will ultimately receive a pension. Thus, pension rights which have slowly been stockpiled over many years may suddenly be lost if the employee leaves or loses his job prior to retirement. Quite apart from the resulting hardship, your committee believes that such losses of pension rights are inequitable, since the pension contributions previously made on behalf of the employee may have been made in lieu of additional compensation or some other benefits which he would have received.

Today, slightly over two-thirds of the private pension plans provide some vested rights to pension benefits before retirement. However, as a general rule, employees do not acquire vested rights until they have been employed for a fairly long period with a firm or are relatively mature. Since there is no general applicable legal requirement for preretirement vesting, some plans do not offer this type of vesting at all, and among those plans which do, there is no uniformity in the vesting rules as provided. At present, only one out of every three employees participating in employer-financed plans has a 50-percent or greater vested right to his accrued pension benefits. Even for older employees, a substantial portion do not have vested rights. For example, 58 percent of covered employees between the ages of 50 and 60, and 54 percent of covered employees 60 years of age and over, still do not have vested rights to even 50 percent of their accrued pension benefits.[2] As a result, even employees with substantial periods of service may lose pension benefits on separation from employment. Extreme cases have been noted in which employees have

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[1] An owner-employee is a sole proprietor or a partner with a greater than 10-percent interest in capital or profits (sec. 401(c)(3)).

[2] U.S. Treasury Department—Fact Sheet, Pension Reform Program, as reprinted in Material Relating to Administration Proposal Entitled the "Retirement Benefit Tax Act," Committee on Ways and Means, 93d Cong., 1st sess., p. 37, Table B.

lost pension rights at advanced ages as a result of being discharged shortly before they would be eligible to retire. In addition, your committee believes that more rapid vesting is desirable because it will improve the mobility of labor, and in this manner promote a more healthy economy.

For reasons indicated above, your committee concluded that it is necessary and desirable to provide a minimum standard of vesting for all qualified pension plans. Clearly, however, it would be counterproductive to increase employer costs by more rapid vesting to such an extent as to significantly curtail the creation of new retirement plans (or to significantly curtail the increase of benefits in existing plans). The committee bill deals with this problem by requiring that all qualified plans must meet one of three minimum standards for vesting.

Explanation of provisions

General rule.—The committee bill provides that a qualified plan would have to meet one of three vesting standards with regard to benefits derived from employer contributions:

1. a graded vesting standard, under which the employee must be at least 25 percent vested in his accrued benefit after 5 years of covered service, with a gradual increase in this percentage in subsequent years, so that the employee must be 100 percent vested after 15 years of service;
2. full vesting after 10 years of covered service; or
3. a "rule of 45", under which an employee with 5 or more years of covered service must be at least 50 percent vested in his accrued benefit when the sum of his age and years of covered service total 45, with 10 percent additional vesting for each year thereafter.

Whichever of these alternatives is adopted, each employee would have to be fully and immediately vested in his accrued benefit derived from his own contributions.[3]

It should be made clear that the standards provided in the committee bill are only minimum standards. The bill's provisions are not intended to prohibit plans with more rapid vesting than that required under the standards in the bill.

Your committee believes that the new vesting rules should provide flexibility, so as to allow plans to choose from several reasonable standards a vesting schedule best suited to the needs of the particular business, and so as not to disrupt existing plans which already have provided reasonable vesting under one of several formulas. In addition, a transition rule and delayed effective dates are provided, so that plans may be amended in an orderly manner to come into compliance with the new minimum standards. Compliance with any of these standards, together with continued vitality of the antidiscrimination standards of the Internal Revenue Code, should afford substantial protection to employees against possible loss of their pension rights.

Graded vesting.—One of the alternatives under the committee bill provides that a qualified plan (whether trusteed or insured) would be required to give each participant vested rights to at least 25 percent of his accrued benefit from employer contributions after 5 years of

[3] Thus, in general, the rules described hereafter relate only to benefits derived from employer contributions.

service, plus 5 percentage points a year for each of the next 5 years and 10 percentage points a year thereafter. This would mean that there must be 100 percent vesting after 15 years of covered service.

This approach has the advantage of providing some vesting at a relatively early point in the employee's career. Thus, if the employee changes jobs after 5 years of service, he would be protected in his rights to at least some part of his accrued benefit. This rule (and, to a lesser extent, the 10-year 100-percent vesting rule and the rule of 45 vesting rule) proceeds on the assumption that some part of the obligation to provide reasonable retirement benefits should be shifted from the employee's last employer and should be shared by those who employed him earlier in his working career.

Also, because vesting occurs gradually, this alternative tends to bring down the cost of the vesting requirement to manageable levels by minimizing the cost of establishing a new plan or improving benefits under an existing plan. By avoiding the "notch" effect of an employee becoming entitled to too much of his vested rights in any one year, it avoids giving the employer an incentive to dismiss an employee rather than to absorb the sharp increase in pension plan costs that would result from a sudden increase in the vesting percentage after a number of years of service.

Ten-year 100-percent vesting.—Another alternative under the committee bill provides that a qualified plan could meet the vesting requirements by giving each participant vested rights to 100 percent of his accrued benefit derived from employer contributions after 10 years of service.

This approach avoids the recordkeeping and other administrative costs involved in accounting for partially vested rights. In the case of the employee who serves for 10 years, this alternative provides greater vesting protection than the graded vesting rule (discussed above) or, in general, the rule of 45 (discussed below).

The "rule of 45".—The third alternative under the bill, known as the rule of 45, would require that a plan provide each employee with vested rights to at least 50 percent of his accrued benefit when the sum of his age and years of covered service equals 45 (subject to a minimum service requirement of 5 years), with at least 10 percent additional vesting for each year of service thereafter.

The age-weighted approach has the advantage that it provides more protection to the older worker, who is closer to retirement, and who may not get another chance to earn a pension if he leaves his employment prior to retirement.[4] For this reason, your committee believes that the rule of 45 should be available as an alternative for those plans which would prefer to take an age-weighted approach.

Transition rule.—Your committee has concluded it is important that all qualified plans ultimately meet one of the three minimum standards in the bill. However, to impose the full force of these standards on existing plans without some transition period would, in some cases, subject these plans to substantial additional costs to pay for the required vesting, possibly causing a reduction of benefits in some plans, or even plan termination. To ease the cost factor in the case of plans already in existence which have not previously been subject to vesting requirements such as those set forth in the committee bill, the bill

[4] Under the present tax law, all rights must be fully vested when the employee attains the normal or stated retirement age, but an older employee who terminates his service prior to reaching retirement age generally does not have to be vested under present law (except to prevent discrimination).

provides a transitional rule under which plans actually in effect on December 31, 1973,[5] would have a reduced vesting requirement for the first 5 years to which the new rules apply.

During the first year to which the bill's vesting standards apply, the plan would have to provide at least 50 percent of the regular requirement under the applicable vesting schedule—this 50-percent level would have to then be increased by 10 percentage points a year, so that the new rules would fully apply in the sixth year after the effective date. For example, under the graded vesting approach, during the first year in which the rules were applicable, an employee with 5 years of covered service would be at least 12.5 percent vested in his total accrued benefit (50 percent of the 25-percent requirement which is generally to apply after 5 years of service); this would increase to 18 percent the next year as the next step in the transition period was reached and also as the employee moved along the graded vesting schedule (60 percent of 30 percent), 24.5 percent the next year (70 percent of 35 percent), 32 percent the next year (80 percent of 40 percent), 40.5 percent the next year (90 percent of 45 percent), 50 percent the next year (100 percent of 50 percent), and by an additional 10 percentage points each year thereafter under the fully effective graded vesting schedule alternative of the bill. By use of this gradual approach, your committee believes that it will be possible to implement the new rules with a minimum of disruption to existing plans.

Preparticipation service.—Once an employee becomes eligible to participate in a pension plan, generally all his years of service with an employer, including preparticipation service, are to be taken into account for purposes of determining his place on the vesting schedule.

However, the plan may ignore service during a period for which the employee decided not to make contributions to a plan requiring employee contributions. Also, service need not be taken into account for periods for which the plan employer did not maintain the plan (e.g., periods before the plan was established or after the employer discontinued contributions but the plan was kept in existence for the purpose of paying already-earned benefits when due).

The committee bill also provides that for purposes of the vesting schedule, service before age 25 may be ignored whether or not the employee was a participant in the plan. This will have the effect of not discouraging plans from providing immediate participation and accrual of benefits for all employees. For example, in a plan providing for immediate participation, at age 30 an employee who had started on the job at 18 would have to be at least 25-percent vested in 12 years of accrued benefits under these rules (instead of only 5 years of accrued benefits, which would be the case if the plan did not permit participation until the employee was 25).

Service for an employer is to be taken into account for purposes of placement on the vesting schedule, even though the service was in a different division of the corporation, or with a different corporation member of the affiliated group. However, the bill does not require that such service be taken into account for purposes of accruing bene-

[5] A plan which went into effect after this date would not be eligible to use the transitional rule, even if the plan agreement included a retroactive clause which provided that the plan was in effect "as of" December 31, 1973.

fits while the employee works for a division which does not have a plan. This may be illustrated by the following example.

Assume that an employee begins work at age 25 for division A of a corporation, which does not have a pension plan, and, at age 40 he transfers to division B, which does have a plan. Under all of the vesting standards, the employee would immediately become fully vested in the benefits which accrue under the plan, because of his 15 years of prior service with the employer.[6]

Benefits accrued in the past.—Generally, the vesting requirements of the bill are to apply to all accrued benefits, including those which accrued before the effective date of the provision. Years of service prior to the effective date also are to be counted for purposes of determining the extent to which the employee is entitled to vesting. For example, in the case of a plan electing the graded vesting alternative, if an employee joined a company at age 30 (at which time a plan was in effect), became a participant in the plan at age 35, and was age 40 on the effective date of the vesting provisions, he would have to become at least 50-percent vested at that time based on 10 years of service (although this percentage would be reduced under the transition rule for plans in effect on December 1, 1973). However, he might not have more than 5 years of accrued benefits since the minimum benefit accrual is based on participation.[7]

This would occur because of his 5 years of participation under the plan plus his 5 years of preparticipation service. Without this pre-effective date rule, it was apparent to your committee that employees who are now older employees would receive the advantages of required vesting only for the accrued benefits they would be able to build up gradually in the future and would receive no protection for benefits accrued prior to the effective date of these provisions, which would usually be the bulk of the benefits earned during their lifetimes.

Your committee considered various methods of providing that pre-effective date service be taken into account in the case of older employees only, but concluded that most such methods provided some type of undesirable "notch" effect and in most cases would result in little cost saving to the employer relative to the rule adopted in the bill.

However, it does not appear to be desirable to provide for retroactive vesting for employees who have already terminated their service with the employer, since this would create a substantial unexpected cost for the plan (thereby possibly jeopardizing the size of benefits for employees still covered under the plan) and might involve serious recordkeeping problems. Thus, the committee bill specifically provides that the plan is not required to take into account service performed prior to January 1, 1969, until the employee has served at least 5 years with his employer after December 31, 1968.

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[6] Conversely, an employee who worked for 5 years in division B, and then shifted to division A, would continue to increase his percentage of vesting in the benefits which he had accrued under the division B plan, even though division A did not have a plan. Of course he would accrue no benefits in the division B plan on account of his division A service (unless the plan provides otherwise).

[7] The employee need have only 5 years of accrued benefits, because the vesting provisions are to apply to pre-effective date service only to the extent of the employee's accrued benefits. The new participation standards are not to apply before the effective date of those standards: if these facts were to occur in the future, the employee would be at least 50-percent vested in at least 9 years of accrued benefits.

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Multiemployer plans.—In the case of a multiemployer plan governed by a collective bargaining agreement, the vesting requirements of the committee bill generally are to be applied as if all employers who are parties to the plan constituted a single employer. For example, years of service with employers A and B under the plan will be counted together in determining vesting, even though the employee now works for employer C (sec. 1014 of the bill).

Service that is seasonal, intermittent, etc.—For purposes of the minimum vesting rules, the question of whether an employee has performed a "year of service" will be determined in accordance with the same regulations which define this term in connection with the participation requirements, described above. Of course, a seasonal or part-time employee who performs a year of service for purposes of determining his place on the vesting schedule, may nonetheless accrue benefits at a slower rate than his full-time, year-round counterpart. However, the relationship between the rate of accrual for a full-time employee, and a part-time or seasonal employee would have to be reasonable and applied on a consistent basis under the plan in order to meet the antidiscrimination requirements. Service with a predecessor of the employer would also be counted, for purposes of the vesting rules, to the extent provided in regulations. Your committee anticipates that the regulations in this area will prevent a situation where an employee might lose his rights to vesting as a result of a business reorganization.

The basic rules have been set forth in terms of "years of service". However, the committee recognizes that there are a substantial number of industries in which the common concepts of years, months, weeks, or hours of service do not apply. For example, it may be appropriate in some industries to provide that a participant must work at least 1,000 hours in order to have completed a "year of service" for purposes of the participation rules and for purposes of determining where he is to be placed on the vesting schedule. Under the bill, the regulations are to take into account such variations of customary working periods.

It must be noted that it is not necessary that the "year of service" concept used for participation or vesting purposes be the same as the "year of service" concept used for purposes of accrual of benefits. For example (as indicated above), in a particular industry it may be appropriate to advance a person one year on the vesting schedule if he has completed 1,000 hours of work during the plan year. However, that same plan may provide that a full year's worth of benefits will accrue only if the employee completes 1,600 hours of service during the plan year. In such a case, completion of 1,200 hours would provide an accrual of .75 of a year's benefits, 1,000 hours would provide accrual of .625 of a year's benefits, 800 hours would provide accrual of .5 of a year's benefits.

Permitted forfeitures of vested rights.—A qualified retirement plan under the committee bill may provide that an employee's vested rights in accrued benefits derived from employer contributions (but not from his own contributions) may be forfeited in the event of the employee's death (although this exception is not to apply if the employee had retired or could have retired and a "joint and survivor" annuity was to be provided).

Also, a plan is permitted to suspend payment of benefits while the participant is working for the employer (for example, where an early retiree returns to work to increase his subsequent pension benefits). In the case of a multiemployer plan, the benefits may be suspended if the employee has resumed employment in the same industry even though not with the same employer. These rules are not to prevent suspension of part of an early retirement supplement (such as a so-called social security supplement) on account of reemployment, even with another employer or in another industry.

In addition, the bill provides for circumstances under which a retroactive plan amendment, if approved for this purpose by the Secretary of Labor, may be permitted to divest accrued benefits that had already become nonforfeitable. In order to be approved by the Secretary of Labor, such a retroactive amendment which divests what were otherwise nonforfeitable benefits, must have been initiated by the Secretary of Labor or proposed by the plan administrator and the Secretary of Labor must be satisfied that the administrator has given adequate notice to all plan participants and other interested persons. The Secretary of Labor must then give those interested persons an opportunity to be heard and must notify the Secretary of the Treasury of any such hearing. Further, the Secretary of Labor may approve such a divesting retroactive amendment only if he finds that (1) the amendment affects the plan only to such an extent as is necessary or appropriate to carry out the purposes of this pension bill and to provide adequate protection to the participants and beneficiaries, (2) but for the amendment, there would be a substantial risk to the voluntary continuation of the plan or a substantial curtailment of pension benefit levels or the levels of employee compensation, and (3) failure to make the amendment would be adverse to the interests of plan participants in the aggregate. Your committee concluded that, when such conditions occurred and those procedural safeguards were followed, it was appropriate to permit these divestitures.

It is permissible for the employee's vested accrued benefits to be "cashed out" under specified circumstances. On termination of a plan, if the value of the nonforfeitable benefit is less than $1,750, then the benefit may be cashed out by a lump-sum distribution whether or not the employee agrees to receive the distribution (but only if the plan permits such a distribution without regard to the employee's preferences). If the employee agrees to the cashing out of his nonforfeitable benefit then, whether or not the amount is less than $1,750, the benefit may be cashed out if the distribution was made on termination of the employee's participation in the plan or under such other circumstances as may be provided by Treasury regulations. Such a nontermination cashing out of accrued benefit might be permitted, for example, on the occasion of a revision of the formula for computation of accrued benefits under the plan. It must be noted that the rule described above permits the cashing out of vested accrued benefits, but the service to which those benefits relate nevertheless must continue to be taken into account, in accordance with the rules described above (service that is seasonal, intermittent, etc.) for purposes of determining whether the employee has met the service requirement for participation and for purposes of determining the employee's place on the vesting schedule

with regard to benefits that accrue in the future. Also in cases where the employee's accrued benefit is not cashed out when the employee leaves the employer's service, if the employee is later reemployed, his percentage of vesting in the benefit which accrued before the service break may be increased on account of service which occurs after the break.

With the limited exceptions noted above, no rights, once they are required to be vested, may be lost by the employee under any circumstances (although, as under present law, the plan may pay the employee the actuarial value of his vested rights upon separation from service). For example, a vested benefit is not to be forfeited because the employee later went to work for a competitor, or in some other way was considered "disloyal" to the employer.[8] Also, rights to benefits are not to be forfeited merely because the employer (or plan administrator) cannot find the employee.

Accrued benefits.—Under the committee bill, the vested employee is protected in his rights to all, or a certain percentage, of his "accrued benefit." It is necessary to provide a statutory definition of an "accrued benefit" because, unless this is a defined amount, vesting of an "accrued benefit" in whatever form is specified by the plan has little, if any, meaning. In the case of any retirement plan other than a defined benefit pension plan, under the bill the employee's "accrued benefit" is the balance in his plan account.[9] This would include, for example, a money purchase pension plan, a profit-sharing plan and a stock-bonus plan.

In the case of a defined benefit plan the bill provides that the accrued benefit is to be determined under the plan, subject to certain requirements. The term "accrued benefit" refers to pension or retirement benefits and is not intended to apply to certain ancillary benefits, such as medical insurance or life insurance, which are sometimes provided for employees in conjunction with a pension plan, and are sometimes provided separately. To require the vesting of these ancillary benefits would seriously complicate the administration and increase the cost of plans whose primary function is to provide retirement income. Also, where the employee moves from one employer to another, the ancillary benefits (which are usually on a contingency basis) would often be provided by the new employer, whereas the new employer normally would not provide pension benefits based on service with the old employer. Also, the accrued benefit to which the vesting rules apply is not to include such items as the value of the right to receive benefits commencing at an age before normal retirement age, or so-called social security supplements which are commonly paid in the case of early retirement but then cease when the retiree attains the age at which he becomes entitled to receive current social security benefits, or any value in a plan's joint and survivor annuity provisions to the extent that exceeds the value of what the participant would be entitled to receive under a single life annuity.

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[8] Some plans also provide that an employer may have lien rights against employee interest in a pension plan. These clauses would also be prohibited under the committee bill, except where the plan requires that the employee be given prior notice of any impending lien and there is a judicial hearing on the probable validity of the employer's claim.

[9] Separate accounting for each employee is required under the committee bill in the case of contributions to a defined contribution plan and for voluntary employee contributions to a defined benefit plan.

Generally, an individual's "accrued benefit" under a defined benefit plan is to be expressed in the form of an annual benefit commencing at normal retirement age. Normal retirement age is the age specified in the plan, which may not be later than age 65 (or, if later, the 10th anniversary of the time the participant commenced participation in the plan).

To encourage older employees to remain on the job, many plans provide for a faster rate of benefit accrual in the employee's later years; thus, an employee might accrue a benefit equal to 1.5 percent of compensation for each year of service until age 55, and 2 percent per year thereafter. This technique is known as "back loading".

The committee believes that it is desirable to allow plans to continue to offer a reasonable amount of back loading as an incentive to its older employees. At the same time, it is obviously necessary to put some limits on this device; otherwise a plan which wishes to evade the vesting requirements could provide for de minimis accruals until an employee's last years of employment, at which point very large accruals would be provided. The committee bill takes account of both these factors by providing, in general, that the plan may not provide back loaded accruals which are more than one and one-third times the rate of accruals for prior years. For purposes of this test, the "rate" of accrual may be either a dollar or percentage rate.

This 133⅓ percent standard may be used only by plans which continue to accrue benefits during participation at least until the participant is eligible to retire (at early retirement age or normal retirement age) with actuarially unreduce benefits. "Front loading" must be kept within the same 133⅓ percent limits, except that a plan is permitted to provide a greater degree of front loading during the employee's first 10 years of service. For years of service after the participant is eligible to retire with unreduced benefits, however, the plan may discontinue benefit accrual, or may provide for front loaded or back loaded benefit accruals with respect to those years. Of course, benefits payable at a particular age will not be considered to be actuarially unreduced on account of age or service if the value of the benefits payable at that age is less than the actuarial value of benefits payable at any subsequent age.

A plan will not fail to meet the back loading requirements merely because a plan amendment (or scheduled benefit increase) increases the rate of benefit accrual for the current year or for future years under the plan, without providing past service credits. For example, if a plan provides a 1 percent rate of accrual for all participants for 1976, and a 2 percent rate of accrual for all participants for years after 1976, this would satisfy the test (subject only to the antidiscrimination requirements of the tax law) even though 2 percent is more than one and one-third times 1 percent.

For purposes of making the loading calculation, it will be assumed that social security benefits, cost of living adjustments, investment performance (where relevant), and all other relevant factors used to compute plan benefits will remain constant.

In order not to impose an undue cost burden on plans which provide for early retirement (for example "30 and out" plans) the committee bill makes clear that the fact that benefits under the plan may be payable to certain employees before normal retirement age may be disregarded.

The 133⅓ percent rule is difficult to apply in the case of certain plans, such as flat benefit plans, which provide for the payment of a flat benefit after completion of a specified period of service. Thus, the committee bill provides an alternative accrued benefit standard that may be met in lieu of the 133⅓ percent rule discussed above. Under this standard, each participant must accrue, for each year of participation (as indicated above, the year of participation used in accruing benefits need not be computed in the same manner as is used for determining "year of service" for purposes of participation and for determining one's status on the vesting schedule), not less than 3 percent of the benefit to which he would be entitled if he participated in the plan for 33 and one-third years and served until age 65 (or any earlier normal retirement age under the plan). Of course, where a plan provides for a more rapid rate of accrual, this would satisfy the test. For example, a plan providing a flat benefit of $200 a month after 20 years of service (accruing benefits for each participant at a rate of 5 percent a year) would satisfy the test even though no additional benefits were accrued after 20 years of service.

Under the 3 percent approach, as under the 133⅓ percent test, early retirement benefits or social security supplements may generally be disregarded in determining if the 3-percent test has been met. Also, a plan amendment which increases the maximum benefit payable under the plan will not disqualify the plan if appropriate adjustments are made to the accrual schedule for years after the benefit increase becomes effective.

As in the case of the 133⅓ percent standard, under the 3-percent test the level of social security benefits and other relevant factors are to be treated as remaining constant. Where compensation is relevant in determining the maximum benefit, the maximum benefit is to be computed as though the employee continued to earn compensation at the same rate that is relevant under the plan. In other words, if the plan provides benefits based on high 3-year average compensation, then that average compensation based on the facts as they exist at the time the accrual is to be made, is to be assumed to continue until age 65 (or earlier normal retirement age). However, in no event is compensation to be taken into account for a period of more than 10 consecutive years.

In order to make clear that rate of accrual rules are not to be manipulated in order to achieve discrimination in favor of employees who are officers, shareholders, or highly compensated, the bill specifies (in the rules for coordination of the vesting standards with the antidiscrimination standards, below) that the Internal Revenue Service is to take account of rates of accruals as well as vesting schedules in determining whether there is prohibited discrimination.

Changes in vesting schedule.—Under the bill, if a plan is amended in a manner which changes its vesting schedule, each person who is a participant in the plan on the date the amendment is adopted (or is a participant in the plan on the amendment's effective date) is to continue to vest his accrued benefits at no less than the rate at which those benefits had been scheduled to be vested under the preamendment vesting schedule. This is to apply both to accrued benefits from preamendment service and to subsequent accrued benefits, and is to apply whether or not the participant had any vested benefits at the time of the amendment. The application of this rule may be illustrated by the

following example: Suppose that A is a participant in a plan which follows the minimum requirements of the graded vesting schedule and that A has completed 4 years of service on the amendment date. The amendment provides that the plan is to vest under the minimum requirements of the 10-year 100-percent vesting schedule. Under this rule, at the end of A's next (fifth) year of service, he is to be 25 percent vested in his accrued benefits, as he would have been had the amended vesting schedule not been adopted. This vesting percentage is to be increased by 5 percentage points for each of the next 5 years, as under the minimum requirements of the graded vesting schedule. However, at the end of the tenth year of service, A's vesting percentage becomes 100 percent, because that is the higher rate provided under the new vesting schedule. The same vesting percentages would apply in each of the years if the amendment had been to change the vesting schedule in the opposite manner (i.e., from 10-year 100-percent vesting to graded vesting).

Allocations between employer and employee contributions.—In plans where there are both employer and employee contributions, it will be necessary to allocate the accrued benefit between the portion derived from the employer contributions, and the portion derived from the employee contributions. This allocation may have to be made because the employee is always fully vested with respect to amounts attributable to his own contributions but not necessarily with respect to those of the employer. Also, information of this type would be needed if an employee, upon leaving employment, desires to withdraw his own contributions.

In the case of any plan other than a defined benefit pension plan, the accrued benefit derived from the employee's contributions under the bill is the amount in his own separate account. If employee and em ployer contributions were not accounted for separately, the employee-contributed portion of the total accrued benefit would be treated as the fraction of the total which is the ratio of employee contributions to total contributions (after taking account of withdrawals).

In the case of a defined benefit pension plan which provides an annual benefit in the form of a single life annuity commencing at normal retirement age (without ancillary benefits), the accrued benefit derived from mandatory employee contributions (which could never be in excess of his total accrued benefit under the plan) would be treated as the total amount of the employee's "accumulated contributions" multiplied by a conversion factor.[10] In general, the conversion factor, which initially is to be fixed at 10 percent for a normal retirement age of 65, is to be used to convert the amount of the accumulated contributions to a single life annuity commencing at normal retirement age. For other normal retirement ages, the conversion factor is to be determined by regulations.

In determining the employee's accumulated contributions, under the bill, interest on the employee's mandatory contributions is to be compounded annually, initially at a rate of 5 percent (beginning with the first plan year subject to the vesting requirements imposed under the committee bill) to the date when the employee would reach normal

[10] Voluntary employee contributions are to be treated the same as a separate account.

retirement age. In addition, any interest accumulated on the employee's contributions (either compounded or simple) in accordance with the terms of the plan, prior to the date when the vesting provisions of the bill first apply to that plan, are to be treated as part of the employee's accumulated contributions. For purposes of this rule, an employee's mandatory contributions include any contributions made to the plan by the employee as a condition of employment, or of participation in the plan, or of obtaining benefits under the plan which are attributable to employer contributions.

The bill authorizes the Secretary or his delegate to adjust the conversion factor, and the assumed rate of interest on employee contributions, on a prospective basis, from time to time, as may be appropriate, but requires him to give at least one year's notice of any such action. The adjustment in the interest rate would be made by comparing the long-term money rates and investment yields for a 10-year period ending at least 12 months prior to the year in which the adjustment would first apply, with the corresponding rates and yield for the 10-year period from 1964 through 1973.[11]

The committee anticipates that the Treasury, in determining money rates and investment yields, will use a composite of a number of indicators. For example, one possible approach might be to give equal values to the dividend yields of the Dow-Jones Industrial Average and the Standard and Poor's 500-Stock Average, and to the interest rates of Barron's or Moody's highest-rated bonds and United States Treasury long-term obligations. This composite, for the 1964–1973 base period, would be set at 5, and the interest rate in the future would be determined by the Treasury Department's comparison of this composite for the base period, with the same composite for the then most recent 10-year period. It is contemplated that this interest rate will be adjusted less often than annually, and that due regard will be given by the Treasury Department to the impact of any such adjustment on existing plans.

Discrimination.—Under present law, rapid vesting requirements are sometimes imposed on a plan in order to prevent discrimination. Your committee anticipates that the higher vesting standards provided in the bill will reduce the need to require faster vesting in order to achieve this purpose. On the other hand, there undoubtedly still will be cases where it will be necessary to require that the plan provide vesting over and above that required under the bill to prevent discrimination under a plan in favor of officers, shareholders, and highly compensated employees. Under the committee bill, the Internal Revenue Service is to require more rapid vesting (such as by requiring a greater portion of the accrued benefit to become vested or by requiring the benefit to accrue faster in order to minimize the possible discriminatory effects of "back loading") if it appears that there had been, or is likely to be, forfeitures under the plan which have the effect of discriminating in

[11] To forestall the need for plan amendments, the committee anticipates that a plan could satisfy the requirements of these provisions if it provided that interest on mandatory employee contributions would be computed at a rate of 5 percent, or at such other rate as may be required from time to time under the Internal Revenue Code of 1954, and the regulations issued thereunder.

favor of the officers, etc. For example, in a profit-sharing plan, such forfeitures could directly benefit the proscribed class of individuals. But in a defined benefit plan there could also be discrimination by reducing the cost to the employer of providing a disproportionate amount of benefits for executives. In other words, if most highly paid employees remain (or are likely to remain) on the job, while other employees tend to leave, the Internal Revenue Service could find a pattern of discrimination (whether or not it was the result of a deliberate policy of dismissing employees in order to prevent vesting) and could require more rapid vesting (for example, by adjusting the vesting schedule, the accrual rate, or both).

Also, present law is designed to ensure that in the event of early plan termination, the benefits under the plan are not paid to employees who are officers, shareholders, or highly compensated employees in a discriminatory manner. The committee bill contains a provision to make it clear that the vesting requirements under the bill are not intended to operate to overturn these rules. Thus, for example, in the event of an early plan termination, a highly compensated employee might receive less than his otherwise vested benefit under the bill, if this were necessary to prevent discrimination.

Plan termination.—Under present law, all accrued benefits in a qualified pension plan must become fully vested (to the extent then funded) in the event of a termination, or the complete discontinuance of contributions under a pension plan. This rule will no longer be necessary with respect to discontinued contributions, because the committee bill (sec. 1013) now provides for an excise tax on underfunding. Employers whose plans are subject to the funding requirements of the committee bill cannot terminate their plans merely by discontinuing contributions, since the employers continue to remain liable for the required contribution.[12] However, the committee bill makes clear that this rule of full immediate vesting is still to apply in the case of a termination, or a partial termination. (Examples of a partial termination might include, under certain circumstances, a large reduction in the work force, or a sizable reduction in benefits under the plan.) Moreover, even after the plan has terminated, the employer is still under an obligation to pay the required funding of the plan through the date of termination and these make-up amounts (if any) are to be taken into account in determining the accrued liabilities which may become vested upon termination.[13]

Class year plans.—A class year plan is a profit-sharing or stock bonus plan which provides for the separate vesting of employee rights to contributions (or rights derived from contributions) to a plan on a year-by-year basis and the withdrawal of these amounts on a class-by-class basis as they mature. The minimum vesting requirements of the bill applicable to a class year plan are satisfied under the bill if the plan provides for 100-percent vesting of the benefits derived from employer contributions within 5 years after the end of the plan year

[12] Plans which are not subject to the funding requirements (e.g., profit-sharing plans, church plans, and government plans) can be required to provide vesting of employee benefits (to the extent funded) if contributions are completely discontinued.

[13] In the case of a multiemployer plan the Secretary or his delegate may provide by regulations for the situation where all the employers of the terminated plan did not contribute at the same rate or on the same basis.

for which the contributions were made. A separate rule is needed for class year plans since they are structured differently than most other types of plans. The 5-year full vesting rule provided in this case by the committee bill assures an employee who terminates his employment under a class year plan that he will not forfeit his rights to more than 4 years of employer contributions.

Recordkeeping requirements.—To carry out the intent of the vesting provisions (primarily those involving intermittent employment), the employer would be required to keep records of the years of service of his employees and the percentage of vesting which the employees had earned, together with any additional information required by the Secretary or his delegate in order to determine the employee's benefits. In the case of a multiemployer plan, the employer would furnish the required information to the plan administrator (who would be required to maintain the records), in accordance with regulations.

Failure to maintain or furnish the required records would result in a civil penalty of $10 for each employee with respect to whom the failure occurs, unless it is shown that the failure is due to reasonable cause. The committee expects that the necessary records will be retained by employers for at least 10 years following a break in service. After that, the employee could still establish his right to vesting based on prior service, but the burden of producing the evidence would shift to the employee.

In addition, the Social Security Administration is to be informed, in a time and manner to be prescribed under regulations, when an employee terminates his service prior to retirement with vested benefits.[14] This information, in turn, will be supplied to plan participants and beneficiaries upon request, and when the individual applies for social security benefits. This provision should minimize the danger that vested rights may be lost because a participant is unaware that he is entitled to receive a pension. (Regulations will provide for the situations where adequate records are not available for periods before the effective date of bill.)

Under the bill, the "plan administrator" would generally be the person so designated under the plan or, if there were no designation, the employer or organization who maintained the plan.

Variations.—In the case of a multiemployer plan, the bill (in sec. 1015) permits the Secretary of Labor to prescribe an alternate method (often referred to as a "variance") of satisfying the vesting schedules and accrued benefit requirements with respect to benefits attributable to employer contributions, if it is established to his satisfaction that rigid application of the requirements of the bill would increase the costs of the plan to such an extent that there was a substantial risk that the plan would be terminated, or there would be a substantial reduction in the benefits under the plan, or in the compensation of the employees. Such a variance could also be granted to prevent an undue administrative burden in connection with the plan.

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[14] In the case of a multiemployer plan, the information would generally be furnished only when the employee left the plan; there would be no need to notify the Social Security Administration merely because the participant changed employers. Also, because of the large "turnover" rate in multiemployer plans, your committee contemplates that the regulations will provide that in the case of a multiemployer plan, no reporting is required for a reasonable period of, say, 2 years after the employee has last performed service under the plan.

The rules for such variances (which may be considered by the Secretary of Labor either on his own motion or on petition by the plan administrator, and only with appropriate notice and hearing safeguards) are described in detail below (in the funding portion of this general explanation).

Joint and survivor annuities.—Under present law, there is no requirement that a qualified employee plan must provide for survivor annuities. This can result in a hardship where an individual primarily dependent on his pension as a source of retirement income is unable to make adequate provision for his spouse's retirement years should he predecease her. To correct this situation, the committee's bill requires that if a plan provides for a lifetime annuity then, where the participant has been married for the 5-year period ending on the annuity starting date, the plan must provide for a joint and survivor annuity (or an arrangement, such as supplementary benefits for the participant's spouse, which has essentially the same effect) where the survivor annuity is at least half of the annuity payable to the participant during the joint lives of the participant and his spouse.

The plan is not required to provide this benefit unless the employee has been married throughout the 5-year period ending on the annuity starting date. This has been done so that plans can provide reasonable protection against adverse selection such as might occur, for example, where a single person "marries" immediately before retirement, retires, and then chooses to take heavily subsidized joint and survivor benefits in the form of a lump-sum distribution. Although your committee's bill does not require joint and survivor benefits to be subsidized (i.e, to be in excess of the actuarial value of a single-life annuity), neither does your committee wish to provide a disincentive to such subsidized benefits.

In addition, concern was expressed that if an employee could provide such protection for his spouse only if he had already retired, then this would provide an unwarranted artificial incentive to exercise early retirement rights where available. Your committee concluded that it was preferable not to provide an artificial stimulus to exercise of these rights (or an added cost to the providing of these rights) of the sort that would result from requiring a survivor annuity to be paid only when the basic annuity was already in pay status. As a result, the bill requires the survivor annuity to be payable if the participant after reaching the earliest age at which retirement is permitted (whether or not retired), where the participant and his spouse have been married throughout the 5-year period ending on the date of the participant's death. This is to be applied on a person-by-person basis. Thus, if a plan permits retirement as early as age 50 with 30 years of service, but otherwise retirement benefits are to be payable only upon attaining age 65, the earliest retirement age for an employee who began work at 25 would be age 55.

The plan may provide that the participant has a reasonable period (as prescribed in regulations) before the annuity starting date during which he may elect in writing—after having received a written explanation of the terms and conditions of the joint and survivor annuity and the effect of such an election—not to take the joint and survivor

annuity. The bill permits a plan to protect against adverse selection by providing that any election to take a single-life annuity (instead of a joint and survivor annuity) or any revocation of such an election would not become effective if the participant dies within some period of time (not in excess of 2 years) of such election or revocation. The plan would be permitted in such a case to disregard the election or revocation. This formulation of the bill's requirements provides flexibility in that it does not require the plan to provide any such rule as to delayed effect if those in control of the plan choose not to do so. The bill does not require the plan to "subsidize" the joint and survivor annuity. Consequently, such a joint and survivor annuity could be less (in terms of dollars per annuity payment) than the single life annuity. Also, the bill does not forbid plans from making reasonable actuarial adjustments to take appropriate account of the possibility that otherwise total costs would be increased because of adverse selection.

The joint and survivor annuity requirements are to apply only to plans to which the new vesting requirements of this bill are applicable. In other words, the joint and survivor rules would not apply to government plans, they would not apply to church plans unless an election had been made to come under the new rules, and the effective date in the case of existing plans would be delayed to the same extent that the effective date is delayed generally with regard to the new vesting provisions. Of course, the plans not subject to these provisions (or to which the new provisions would not apply for some years into the future) may offer joint and survivor options if they wish to do so. The mandatory provisions of the bill will not apply unless that participant's annuity starting date is on or after the effective date with regard to that plan and would not apply unless that participant was an active participant in the plan on or after that effective date.

Plan mergers.—The committee bill contains a provision (sec. 1021) to ensure that the rights of participants are fully protected in the event of plan mergers. Under this provision, which applies to any plan merger occurring after October 22, 1973, each participant must be entitled to receive a benefit immediately after the merger (determined as if the plan then terminated) which has not less than the value of the benefit he would have been entitled to receive immediately before the merger (determined as if the plan then terminated. Moreover, the funding of his accrued benefit must be at least as adequate after the merger as it was before the merger. Without such a provision, the committee was concerned that the rights of plan participants might be diluted in some instances, as the result of plan mergers. As a further safeguard, the bill requires that in the case of any plan merger which occurs after enactment, the plan administrator must give 30 days notice to the Internal Revenue Service, including an actuarial statement indicating that the requirements of the bill have been met.

Alienation.—To further ensure that the employee's accured benefits are actually available for retirement purposes, the committee bill also contains a provision requiring the plan to provide that benefits may not be assigned or alienated. (Of course, this provision is not intended to prevent the transfer of benefit rights from one qualified plan to another.)

Nevertheless, a plan will be permitted to provide for voluntary and revocable assignments (not to exceed 10 percent of any benefit payment).

This provision is not intended to interfere with the current practice in many plans of using vested benefits as collateral for reasonable loans from the plans, where the "prohibited transactions" provisions of present law (sec. 503 of the Code) and other fiduciary requirements are not violated.

Benefits of terminated participants.—Protection is given to retired individuals and individuals who are separated from the service of the employer against reductions in private plan benefits when social security benefit levels increase. In general, under present integration procedures, social security benefits attributable to employer contributions are treated as though they were part of the private plan. As a result when the level of social security benefits increases, some integrated plans have reduced the amount of the retirement benefits that they provide for covered employees.

Present law under administrative practice provides that qualified plans may not use increases in social security benefit levels to reduce the benefits that they pay where the employees concerned are retired and already receiving integrated plan benefits. The bill codifies this treatment for retired persons. It also extends the prohibition against reducing plan benefits where social security benefit levels are increased to cases where the individuals concerned are separated from service prior to retirement and have deferred nonforfeitable rights to plan benefits. This provision is effective for increases in social security benefits which take place after the date of enactment or on the date of the first receipt of plan benefits or the date of separation from service (whichever is applicable) if that date is later.

These changes do not affect the ability of plans to use the integration procedures to reduce the benefits that they pay to individuals who are currently covered when social security benefits are liberalized. Your committee, however, believes that such practices raise important issues. On the one hand, the objective of the Congress in increasing social security benefits might be considered to be frustrated to the extent that individuals with low and moderate incomes have their private retirement benefits reduced as a result of the integration procedures. On the other hand, your committee is very much aware that many present plans are fully or partly integrated and that elimination of the integration procedures could substantially increase the cost of financing private plans. Employees, as a whole, might be injured rather than aided if such cost increases resulted in slowing down the growth or perhaps even eliminated private retirement plans.

In view of the serious issues involved in the integration of private plans with the social security system, your committee believes that it is desirable to postpone action on this issue pending further study of this problem. More specifically, your committee plans to consider this overall problem again at the earliest opportunity, possibly in connection with future tax reform or social security legislation. However, your committee believes that no further integration of social security and pension benefits should be allowed under any further regulations issued by the Secretary or his delegate at least until June 30, 1975.

Payment of benefits.—To ensure that a participant can reasonably expect to receive his benefits during his retirement years, the committee bill requires a qualified plan (to which the basic vesting provisions apply) to commence payment of benefits to the participant (unless he elects otherwise in writing and this election is permitted by the incidental death benefits rule) not later than the 60th day after the close of the plan year in which the latest of these events occurs: (1) the participant attains age 65; (2) the 10th anniversary of the time the participant commenced participation in the plan; or (3) the participant terminates his service with the employer. This requirement is set in terms of the end of a plan year, rather than the date on which the event occurs, in order not to disrupt unduly the administrative practice of plans that begin retirement benefits for all new retirees on the same date. The second of the above alternatives (the 10th anniversary of commencement of service) is designed to permit a defined benefit plan to have an adequate period of time in which to fund the benefit for a person who first enters the plan at a relatively late age. The third of the above alternatives (termination of service) has been added in recognition of the fact that these benefits are designed primarily to provide for the participant's retirement.

Effect of withdrawal of employee contributions.—At the present time, many employee plans require employees to make contributions in order to receive employer contributions (or benefits to be funded by the employer). Some such plans permit employees to withdraw their contributions (or the benefits derived from their contributions) but impose as a "penalty" for such withdrawal the forfeiture of some or all of the benefits derived from employer contributions. Where this occurs, the effect is to reduce the retirement protection afforded to the employee. Your committee is not at this point expressing a view as to whether employee contributions or the right to withdraw those contributions are desirable features of retirement plans. However, it does not appear appropriate to provide for forfeitures derived from employer contributions merely because of a withdrawal by the employee. Accordingly, the committee bill specifically requires all qualified plans to forbid forfeitures of nonforfeitable benefits derived from employer contributions solely because of withdrawals by employees of any parts of the benefits derived from the employees' contributions.

This limitation is to apply only to plans to which the new vesting provisions of the bill apply.

Comparability of plans having different vesting provisions under the antidiscrimination rules.—There are certain classes of employees, such as engineers, whose rate of job mobility is so high, that many of them would not receive protection even under the vesting provisions provided under the bill. To be effectively covered under a pension plan, these employees would have to receive a very substantial amount of vesting during their first 5 years of employment. At the same time, if all employees were to be provided with vesting on this rapid a basis under the plan, the cost might be so high that the employer would terminate the plan, or drastically reduce the benefits under the plan. To meet this situation, the committee bill contains a provision which would allow the engineers and other employees with a similar problem, in effect, to trade off some of their benefits in exchange for earlier vesting.

Under present law a single plan may satisfy the antidiscrimination requirements (sec. 401(a)(4)), if either the contributions or the benefits do not discriminate in favor of certain enumerated employees. Generally, profit-sharing plans, stock bonus plans, and money purchase plans can satisfy this requirement if the contributions are nondiscriminatory even though the benefits may discriminate. Defined benefit plans can satisfy this requirement if benefits are nondiscriminatory even though the contributions are discriminatory. A target benefit plan, a type of money purchase plan, may satisfy the requirement if the anticipated benefits do not discriminate even though the contributions do. (For this purpose actual investment experience is not considered.) Also under existing law, two plans can be considered as one for purposes of satisfying the antidiscrimination requirements, either as to contributions or benefits.

Under the committee bill an employer might set up two retirement plans, one with very rapid vesting, the other with slower vesting, but with higher benefits. The bill provides that for the purposes of applying the antidiscrimination rules, the two plans could be considered as a unit (as under present law) and the plan with more rapid vesting would not be considered discriminatory merely because of this feature (even if highly compensated employees were covered under the plan), if contributions were comparable or (in the case of defined benefit plans) if benefits under this plan were scaled down appropriately in relation to benefits provided under the plan with less rapid vesting. (Of course, each plan would have to at least meet the minimum vesting schedule provided in the committee bill and would also have to be nondiscriminatory as to the employees covered by it.)

Thus, in the case of a defined contribution plan, the tax deductible contributions to both plans would be required to be the same in proportion to covered compensation. This would mean, in effect, that employees in the plan with less rapid vesting would receive increased benefits as the result of forfeitures,[15] whereas there would be relatively few forfeitures under the plan with earlier vesting.

In the case of a defined benefit plan, the same principle of comparability would apply, but here the level of benefits under the plan with earlier vesting would have to be lower, in relation to the benefits provided under the other plan. Generally, these comparisons would be made on an actuarial basis, in accordance with regulations.

By this provision the committee is clarifying this matter for the future. It intends that prior law on this point be determined as if this provision had not been enacted.

Protection of pension rights under government contracts.—Many employees, such as engineers, who are employed in industries engaged to a substantial extent in the performance of Federal contracts, have an unusually high rate of mobility which results to a considerable extent from terminations or modifications of Federal contracts, grants, or procurement policies. As a result of this unusual mobility, these employees are particularly susceptible to the loss of their pension rights due to changes in their employment status before they can become vested.

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[15] If the employer reduced his tax deductible contributions under the plan because of forfeitures, the tax deductible contributions to the plan with early vesting would also have to be reduced; comparatively, the employees in the plan with less rapid vesting would always have to accumulate larger benefits in proportion to cmpensation.

To meet this situation, the bill directs the Secretary of Labor to undertake a study, in consultation with professional societies, business and labor organizations, and other Federal agencies, of steps to be taken to ensure that professional, scientific, technical, and other personnel employed under Federal contracts are protected against loss of their pensions resulting from job transfers or loss of employment. The Secretary of Labor is to report to Congress on this subject within 2 years after the date of enactment and shall, if feasible, develop recommendations for Federal procurement regulations to safeguard pension rights in this situation within one year after filing his report. These regulations are to become effective unless either House of Congress adopts a resolution of disapproval within 90 days after the proposed regulations are submitted to the Congress by the Secretary of Labor. Of course, individual government agencies would be free to take action to protect the rights of workers employed under agency contracts, even if no comprehensive regulations, applicable on a government-wide basis, could be developed.

Church and government plans, and union-sponsored plans.—Church and government plans (described above under participation and coverage) are exempt from the vesting provisions of the bill but must comply with the requirements of present law in this area (as in effect on the day before enactment) in order to be qualified. Church plans may elect to come under the provisions of the bill and, once made, such an election will be irrevocable.

The committee bill also exempts from the vesting requirements plans which do not, at any time after enactment, provide for employer contributions—in other words, union-sponsored plans. Since these plans are, in effect, controlled by the employees for whose benefit they are established, there is no need to impose the vesting requirements of the bill. However, if the plan provides for employer contributions, the mere fact that no such contributions are made (either because the plan is fully funded, or because the employer fails to comply with the funding requirements of the bill, or for some other reason), will not result in an exemption for the plan from the vesting requirement.

Effective dates

These provisions apply generally to plan years beginning after the date of enactment of the bill. Later effective dates (which may vary from 1976 to 1981, depending on the circumstances of the plan) are provided in the case of plans in existence on January 1, 1974, in order to afford such plans adequate opportunity to adopt any amendments needed in order to conform to the new requirements resulting from this bill. The effective date provisions are described more fully above, in the discussion of participation and coverage requirements.

Revenue effect

Estimates of the revenue effect of the minimum vesting provisions vary with the assumption made about the relationship between additional employer contributions to pension plans and cash wages. If it is assumed that the additional employer contributions will be a substitute for cash wages, the estimated revenue loss is $130 million. On the other hand, if it is assumed that the additional employer contributions will be an addition to cash wages, the estimated revenue loss

$265 million. The estimates under both cases assume that benefits under pension plans are not decreased and that no benefit increases are foregone as a result of the bill. The estimates are based on 1973 levels of income and employment.

C. Funding

(Secs. 1013, 1033 of the bill and secs. 404, 412, 4971, 6059, 6692, 7517 of the Code)

Present law

Under present tax law, contributions to a qualified pension plan generally must be sufficient to pay the liabilities created currently (*i.e.*, the normal pension costs) plus the interest due on unfunded accrued pension liabilities (past service costs) (regs. § 1.401–6(c)(2)(ii)).[1] This tends to keep the amount of unfunded pension liabilities from growing larger, but does not require any contributions to be made to amortize the principal amount of the unfunded liabilities.

Pension plan liabilities [2] generally are estimates and are based on actuarial calculations. Consequently, all actuarial methods, factors, and assumptions used must, taken together, be reasonable and appropriate in the individual employer's situation (Regs. § 1.404(a)–3(b)). When applying for a determination letter from the Internal Revenue Service that a plan is qualified, the actuarial methods, factors, and assumptions used generally must be reported to the Service, along with other information to permit verification of the reasonableness of the actuarial methods used. Changes in actuarial assumptions and methods must be reported annually to the Service.

Actual experience may turn out to be different from anticipated experience, changing the estimated pension liabilities (and needed contributions) and resulting in experience loss or experience gain. Depending on the circumstances, the contributions needed to make up experience losses may be deducted currently or may be added to past service costs and deducted only on an amortized basis.[3] Similarly, depending on the circumstances, experience gains may reduce the plan cost currently or reduce costs under one of the spreading methods used to determine the amounts deductible.[4]

The value of plan assets also affects the amount of contributions. Under administrative rulings, assets may be valued by using any valuation basis if it is consistently followed and results in costs that are reasonable.

If an employer does not make the minimum required contributions to a qualified plan, under administrative practice the deficiency may be added to unfunded past service costs. However, the plan also may be considered terminated, and immediate vesting of the employees' rights, to the extent funded, may be required.

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[1] This requirement applies only to pension and not to profit-sharing or stock bonus plans.

[2] In determining liabilities, an employer must take into account factors such as the basis on which benefits are computed, expected mortality, interest, employee turnover, and changes in compensation levels.

[3] Under the "10-percent" deduction limit (sec. 404(a)(1)(C) of the Code), if the experience loss occurs using the same assumptions as previously, the additional contributions, subject to certain restrictions, may be deducted currently. If the deficit results from a loss in asset values or revaluation of liabilities using more conservative assumptions the deficit may be added to past service cost. Rev. Rul. 57–550, 1957–2 C.B. 266.

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General reasons for change

Significant tax benefits are allowed under the Internal Revenue Code for plans that provide for employee retirement. Implicit in these tax benefits is the requirement that tax qualified plans will in fact provide the retirement benefits promised. However, the available evidence has demonstrated that a significant portion of existing tax qualified pension plans have not been adequately funded and are not accumulating sufficient assets to pay benefits in the future to cover employees. As a result, many employees now covered by tax qualified pension plans may not actually receive the pensions they have been promised, because the needed funds will not be available. Your committee believes that the present minimum funding requirement for plans qualified under the Internal Revenue Code is not adequate to prevent this underfunding, since it does not require any payment to reduce the amount of the outstanding unfunded liabilities, which may be substantial. As a result, your committee's bill provides new minimum funding standards.

Under the bill, normal costs of covered plans are to be currently funded. Additionally, newly-established unfunded past service liabilities of covered plans generally are to be amortized over no more than 30 years, although existing past service liabilities generally are to be amortized over no more than 40 years. In addition, experience deficiencies generally are to be amortized over no more than 15 years. (Generally, longer periods are to be allowed for multiemployer plans.) Alternatively, if funding requirements are higher under a second general standard which is based on accrued vested liabilities, this standard is to apply in lieu of the rules set forth above. Under this standard, accrued vested liabilities are determined, as also are the value of the plan's assets. To the extent the vested liabilities exceed the value of assets, the first year's payment under a 20 year amortization schedule (principal and interest) of unfunded vested liabilities is to be paid in the current year. A new determination with respect to the applicability of this second general standard is to be made in each of the succeeding years, starting with a new 20 year period. Of course, pension liabilities may be amortized at a faster rate than under the minimum required standard, if desired.

Your committee recognizes that the amount required to fund a pension plan is in large part determined by actuaries' estimates of future plan costs, which in turn are based on the actuarial methods and assumptions used for each plan. Consequently, the determination of the amount of contributions that must be made to a plan to adequately fund the plan benefits is significantly affected by the professional decisions of the plan's actuary. Since there is no existing government regulation or licensing requirement for actuaries as there is for, *e.g.*, lawyers and accountants, your committee believes that minimum standards of competence should be established for persons who make actuarial computations for qualified plans. Consequently, the bill requires the Secretary of the Treasury (in regulations that are also to be approved by the Secretary of Labor) to set standards of competence for persons who make actuarial reports to the Internal Revenue Service. The bill

[4] See Rev. Rul. 59–153, 1959–1 C.B. 89, discussing a pension plan using the "entry age normal method," where adjustment for gains is generally made by deducting the amount of gains arising in any year from the next year's deductible limit under sec. 404(a)(1)(C). See also Rev. Rul. 65–310, 1965–2, C.B. 145, discussing a plan using the "frozen initial liability method," where adjustments for gains are spread automatically as a part of current and future normal costs.

also provides that actuaries enrolled to practice before the Service are to certify plan costs and report the actuarial methods and assumptions used for each pension plan. Your committee also contemplates that the Secretary will establish an actuarial advisory board to provide assistance in setting standards for enrolling actuaries, setting guidelines for actuarial assumptions and in other pertinent matters.

Additionally, your committee believes that the current sanctions on an employer for failure to adequately fund his qualified plan are inappropriate, since they may not affect an employer's decision to underfund his plan. For example, an employer may not feel any reason to make the minimum required contributions to his plan if the only consequence of underfunding is to give his employees vested rights in the amounts that are already funded. To resolve this problem, the bill provides an excise tax on the failure to meet the minimum funding requirements.

Your committee also recognizes that, within limits, employers who are financially unable to meet the funding requirements should be allowed to postpone paying contributions to their plans. Therefore, the bill allows the Internal Revenue Service to grant variances from certain minimum funding requirements if the employer demonstrates that substantial business hardship would otherwise result and that applying the minimum standard would be adverse to the interests of plan participants in the aggregate. The amount for which the variance is granted is to be amortized over no more than 15 years. The bill also provides that the Secretary of Labor may allow variances that would provide longer amortization periods for funding multiemployer plans if substantial business hardship would otherwise result. Additionally, in certain cases, the Secretary of Labor is to be able to prescribe alternative funding methods for multiemployer plans.

Explanation of provisions

Minimum funding rules, in general.—Your committee's bill establishes new minimum funding requirements for qualified plans so these plans will accumulate sufficient assets within a reasonable time to pay benefits to covered employees when they retire. Of course, contributions generally may be greater than these minimum requirements if the employer so desires (however, see discussion below under *Maximum deductions for plan contributions*). The new funding rules generally are to apply to any plan that, after the effective date of the funding provisions for the plan in question, has qualified (or has been determined by the Internal Revenue Service to qualify) under section 401(a), 404(a)(2) (employees' annuities plans), or 405(a) (bond purchase plans) of the Code. However, the new requirements generally are not to apply to profit-sharing or stock bonus plans, governmental plans, certain church plans, plans with no employer contributions, and certain insured plans. Once a plan or trust has been tax qualified, the minimum funding requirements will apply, and they are to continue to apply to the plan or trust, even if it later loses its qualified status. If a plan loses its qualified status, the deduction rules for nonqualified plans are to apply even though the minimum funding standard continues to apply to the plan.

Generally, under the new funding requirements the minimum amount that an employer is to contribute annually to a defined benefit pension plan includes the normal costs of the plan (as under current law), plus amortization of past service liabilities, experience losses,

etc. The minimum amortization payments required by the bill are calculated on a level payment basis—including interest and principal—over stated periods of time. Generally, initial past service liabilities and past service liabilities arising under plan amendments are to be amortized over no more than 30 years (40 years for the unfunded past service liabilities on the effective date of these new funding rules, in the case of existing plans), and experience losses are to be amortized over no more than 15 years. However, generally experience gains and losses need not be calculated more often than every three years. With respect to multiemployer plans, past service liabilities generally may be amortized over no more than 40 years, and experience losses over no more than 20 years. However, an alternative funding standard, based on contributing a portion of the unfunded nonforfeitable liabilities under the plan, is to be used if it brings a higher level of funding in any year than would the basic minimum funding standard. This alternative standard is to apply both to multiemployer and other plans.

If an employer would otherwise incur substantial business hardship, and if application of the minimum funding requirements would be adverse to plan participants in the aggregate, the Internal Revenue Service may waive the requirement of current payment of part or all of a year's contributions of normal costs, and amounts needed to amortize past service liabilities and experience losses; the amount waived (plus interest) is to be amortized not less rapidly than ratably (including interest) over 15 years, and no more than 5 waivers may be granted for any 15 consecutive years. (As described subsequently other variances may be allowed by the Secretary of Labor for multiemployer plans.)

For money purchase pension plans, the minimum amount that an employer is to annually contribute to the plan is the amount that must be contributed for the year under the plan formula. For purposes of this rule, a plan (for example, a so-called Taft-Hartley plan) which provides an agreed level of benefits and a specified level of contributions during the contract period is not to be considered a money purchase plan if the employer or his representative participated in the determination of the benefits. On the other hand, a "target benefit plan" is to be treated as a money purchase plan for purposes of the minimum funding rules.

Under the new funding rules, generally each covered plan is to maintain a new account called a "funding standard account." This account is to aid both the taxpayer and Internal Revenue Service in administering the minimum funding rules. The account also is used to assure that a taxpayer who has funded more than the minimum amount required is properly credited for that excess and for the interest earned on the excess. Similarly, where a taxpayer has paid too little, the account is to assist in enforcing the minimum funding standard, and to assure that the taxpayer is charged with interest on the amount of underfunding.

Each year the funding standard account is to be charged with the liabilities which must be paid to meet the minimum funding standard. Also, each year the funding standard account is to be credited with contributions under the plan and with any other decrease in liabilities (such as amortized experience gains). If the plan meets the minimum funding requirements at the end of each year, the funding standard

account will show a zero balance (or a positive balance, if the employer has contributed more than the minimum required). If the minimum contributions have not been made, the funding standard account will show a deficiency (called an "accumulated funding deficiency").

The funding rules established by the bill are in addition to the rules which provide the maximum deduction limits for contributions to a plan. However, generally a contribution that is required by the minimum funding rules is to be deductible currently. In addition, the rules governing the maximum deduction limitations are to be changed to make them more compatible with the minimum funding requirements.

Normal costs and initial past service liabilities.—Your committee's bill specifically continues the requirement of present law that the normal costs (arising from current liabilities) of a defined benefit pension plan must be currently funded. In addition, in order to give assurance that a plan will have sufficient assets to pay benefits, the bill establishes new minimum requirements for funding accrued past service liabilities. In general, the bill requires that an employer's contribution to a defined benefit pension plan for initial past service liabilities is to be sufficient to amortize these liabilities, on an accrued basis, over no more than 30 years from the date that the plan is established (40 years for multiemployer plans).

For a plan in existence on the date of enactment, unfunded past service liabilities existing as of the effective date of the new funding provisions applicable to the plan are to be treated as initial past service costs to come under the minimum funding rules and are to be amortized over no more than 40 years. This longer period will allow existing plans sufficient time to make the transition into the new funding rules. Since existing plans may have to be amended to meet the new vesting and participation requirements of the bill (and these amendments would affect plan costs), the 40-year amortization period is to be allowed for past service liabilities existing as of the plan year for which the bill becomes effective, including those liabilities arising from amendments made to meet the new vesting and participation requirements, even if those amendments are made retroactively after the effective date respecting the plan. However, the 40-year amortization is allowed only with respect to liabilities arising from retroactive amendments that are made by the time the employer must file his tax return for his taxable year in or with which the first plan year to which the new minimum funding requirements apply ends. In the cast of multiemployer plans, such retroactive amendments may be made within two years after the close of the first plan year to which the new minimum funding requirements apply.

The minimum funding requirement for past service liabilities in effect is analogous to payment over 30 years of a loan secured by a home mortgage. It requires contributions to the plan to be made not less rapidly than if made on a level payment basis over 30 years, with each payment including both interest and principal. For example, if the past service liability is $1,000,000 at the time a plan is established, the minimum level payment that is to be made each year, for 30 years, to meet the funding requirement (calculated at an interest rate of 6 percent per annum over the 30-year period) is $68,537 per year (assuming contributions are made at the beginning of each year). In addition, the employer would be required to contribute annually to the plan an amount equal to the normal cost of the plan.

The interest rate to be used in calculating the minimum payments for amortization of initial past service liabilities is the same rate as that used in determining plan cost, at the time the plan is established, or at the time the new funding requirements apply to the plan, in the case of plans in existence on the date of enactment. (Similarly, the interest rate used to amortize past service liabilities arising from amendments, to amortize experience losses, and to amortize contribution waivers also is the rate used to determine plan costs at the time the liability in question first arose.) If the interest rate used to determine plan costs is changed as of a later date in order to conform with experience, the initial amortization schedule of level payments is not to be changed, but the consequent increase (or decrease) in plan costs is to be amortized as an experience loss or gain (treated in the manner described below).

Under your committee's bill, the basic minimum funding rules—both those which apply to all past service liabilities and those which apply to normal costs—require funding on the basis of accrued, (that is, both vested and nonvested) liabilities, not merely on the basis of vested liabilities. The use of accrued liabilities for this purpose appears appropriate because it generally provides the most orderly and comprehensive method for funding the plan's entire liabilities. In this way, gradual payments will be made to fund all of a plan's present liabilities, including the presently nonvested accrued liabilities which are expected to vest in the future. Moreover, funding on the basis of accrued liabilities tends to produce somewhat more rapid funding, and as a result generally provides more protection to plan participants.

Generally, the 30-year amortization requirements initially add only moderately to an employer's funding cost under present law. This is true because under present law interest on unfunded accrued past service liabilities (which accounts for the bulk of the level amortization payments required under the bill in the early years) must be contributed to a qualified pension plan. Therefore, your committee believes that 30-year amortization will not hamper an employer in starting a new plan, or in adding plan amendments, that includes past service liabilities. Similarly, the 40-year amortization will not unduly increase present costs of an employer with an existing plan.

Plan amendments.—The bill provides that past service liabilities created by plan amendments are to be treated generally in the same way as initial past service liabilities of new plans for purposes of the minimum funding rules. Under the minimum funding rules these liabilities are to be amortized separately over a 30-year period (40 years for multiemployer plans) from the date the amendment is adopted even if this precedes the date on which benefits increase. For example, if the unfunded accrued past service liability added by an amendment is $100,000, the employer generally is to amortize this increase in past service liability in 30 annual payments of $6,854 (assuming an interest rate of 6 percent and that contributions are made at the beginning of each plan year).

Plan amendments which decrease past service liabilities (by decreasing plan benefits) are treated consistently with plan amendments increasing benefits; that is, decreases in past service liabilities from plan amendments are to be amortized over 30 years (40 years for multiemployer plans). Consequently, the minimum amortized annual payments to fund past service liabilities that must be contributed by an

employer who decreases plan benefits generally will not be less, in any one year, than amortized payments required for an employer who started out with a plan providing the same (lower) benefits. (Of course, a decrease in benefits will often also decrease the normal cost which must be funded annually.)

Under the bill plan amendments may be made on a retroactive basis, to a limited extent, without the approval of the Secretary of Labor. In this case, plan amendments may be made after the close of a plan year and yet apply to that year if they are made within the time for filing the employer's return (including extensions) for the employer's taxable year with or within which that plan year ends. (Since a single employer's plan year is not a workable standard for multiemployer plans, with respect to multiemployer plans, an amendment may be made within two years after the close of the plan year.) It is expected that this provision may be used to decrease plan liabilities where an error has been made in calculating the amount of benefits that can be provided and funded under the minimum standard. However, amendments made under this provision are not to decrease accrued benefits of any participant determined as of the beginning of the first plan year to which the amendment applies.

This provision also may be used with respect to increases in plan liabilities. As discussed above, to the extent that past service liabilities are added by plan amendments that are effective as of the effective date of the new funding requirements for existing plans, and are made within the time allowed for retroactive amendment, these past service liabilities may be amortized over a 40-year period.

Your committee also recognizes that in certain cases where plan participants would otherwise suffer substantial adverse consequences, it may be appropriate for plan benefits to be retroactively reduced beyond the limit described above. Therefore, the bill provides that, on application of the plan administrator (or on motion of the Secretary of Labor) and after proper notice to all interested parties and a public hearing where interested parties are provided adequate opportunity to be heard, the Secretary of Labor may approve a retroactive decrease in plan benefits (whether or not nonforfeitable). However, before such approval is granted, the Secretary of Labor must make findings of fact that if the amendment is not approved, there would be a substantial risk that the plan would not be continued, a substantial risk of a curtailment of benefits (more than the curtailment that would occur with approval of the amendment), or a substantial risk that current levels of employee compensation would be substantially curtailed. Furthermore, the Secretary of Labor must find that failure to approve the amendment would be adverse to the interests of plan participants in the aggregate. Any amendment approved by the Secretary of Labor is to be retroactive only for such limited time period, and is to decrease benefits only to such extent, as is necessary or appropriate to carry out the purposes of the bill and as is necessary or appropriate to provide adequate protection to plan participants and beneficiaries

Your committee's bill provides that a retroactive decrease in benefits approved by the Secretary of Labor is not to eliminate a funding deficiency for purposes of the nondeductible 5 percent excise tax (discussed below). However, a reduction in benefits may be used to correct a funding deficiency for purposes of the 100 percent excise tax on underfunding (discussed below).

Experience losses and gains.—During the course of a pension plan, actual plan experience may turn out to be poorer than anticipated. For example, the value of plan assets may turn out to be less than expected. Where this occurs, there generally will be an "experience loss" which must be funded if the plan is to be able to pay the benefits owed.[5] Since experience losses relate to previously established plan liability, they may indicate that the plan has become underfunded in relation to the required minimum for funding normal costs and past service liabilities. Consequently, your committee believes it is reasonable to require faster funding for these amounts than for newly established past service liabilities. The bill provides that under the minimum funding rules these losses are to be amortized (with level annual payments, including principal and interest) over not more than 15 years (20 years for multiemployer plans) from the date the loss is determined. Your committee believes that a 15-year amortization period generally will provide adequate funding of experience losses, while at the same time protecting employers from potentially severe financial burdens arising from experience losses created by uncontrollable events.

Your committee understands that the 15-year period, while protecting the financial security of plans, generally will not discourage pension plans such as "final average pay plans" which increase accrued benefits as pay increases, and thus are generally desirable from the employee's view. Additionally, it is believed that under the 15-year requirement employers will not be subject to unnecessary financial burdens where they have experience losses beyond their control.

A pension plan also may have experience gains during the course of its operation. These gains would occur because experience is more favorable than anticipated. For example, the value of plan assets may be greater than expected. The bill treats experience gains symmetrically with experience losses, so that gains are spread over 15 years (20 years for multiemployer plans) from the date they are determined.

The bill provides that changes in plan cost that result from changes in the Social Security Act (or other retirement benefits created by State or Federal law), from changes in the definition of wages under section 3121 of the Code, or from changes in the amount of such wages taken into account for purposes of section 401(a)(5) (relating to integration with Social Security, etc.) are treated as experience losses (or gains). It is expected that the actuarial assumptions for plans affected by social security, etc. now generally will allow for such changes since to a substantial extent these changes may be anticipated. In this circumstance, if changes in plan cost from changes in social security were not treated as experience gains to be amortized, employers with plans that did not properly allow for social security changes might be able to, upon increases in social security payments, substantially decrease current contributions and thereupon plan participants would receive correspondingly less protection.

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[5] However, the bill provides that experience gains and losses are to be determined under the funding method used to determine costs under the plan. It is understood that some funding methods, such as the "aggregate method", do not provide experience gains or losses, but differences between anticipated and actual experience are subsumed in the basic funding requirements of the method. If a plan were to use such a funding method, it is anticipated that the plan would not need to separately amortize experience gains or losses.

Your committee recognizes that plan experience rarely conforms to anticipations on a year-by-year basis, but that experience often is close to expectations over a longer period. Therefore, to smooth fluctuations in funding required by amortization of experience gains and losses, the bill provides that experience gains and losses are to be determined at least every three years and generally need not be determined any more frequently. However, under the bill the Secretary of the Treasury may provide by regulations that experience gains and losses are to be determined more frequently than every three years, in particular cases. Your committee expects that this generally will be required only for plans that show an unusual need for frequent calculations, such as for plans with relatively high claims for payments with respect to assets available.

Additional funding standard.—Your committee recognizes that certain plans with a high proportion of nonforfeitable benefits in relation to assets available may not be adequately funded under the basic minimum funding standard. Therefore, an additional minimum funding standard is provided in the bill which is to be used in any year in which it would require a greater amount of plan contributions than would the basic minimum funding standard.

Under the additional funding standard, the plan is to determine unfunded nonforfeitable liabilities (total nonforfeitable liabilities less plan assets). Then the amount required to amortize these unfunded nonforfeitable liabilities over a period of 20 years (including principal and interest) is to be calculated. The amount to be contributed is the first year's payment under that amortization schedule. This calculation is to be repeated each year (on the basis of a new 20 year period) in which the additional funding standard would require a higher contribution than the basic standard. Since the amount of unfunded nonforfeitable liabilities generally will decrease with contributions, in succeeding years the payment under the additional funding standard generally will be less than the prior year's payment. Therefore, this is a declining balance method of funding.

Your committee anticipates that the amount of unfunded nonforfeitable liabilities generally will be reported on an annual basis to the Department of Labor, and, thus, the basic figures required for this calculation will be readily available to most plans. Additionally, your committee understands that this additional standard will apply infrequently but that it will bring about necessary additional funding in the few cases where it will apply.

Variance from funding requirements.—At times an employer's financial circumstances may prevent him from meeting the minimum funding requirements. Your committee does not believe that in such a situation an employer should be forced to abandon his plan. To deal with cases of this type the bill provides that upon a demonstration by the employer of substantial business hardship and a showing that application of the minimum funding requirements would be adverse to the interests of the plan participants in the aggregate, the Internal Revenue Service may waive all or part of the minimum funding requirements for a year, including normal costs, amortization of past service costs and amortization of experience losses. However, to limit the underfunding which may occur in cases of this type, the bill provides that the Service may not waive all or part of the funding requirements for more than five years (whether or not consecutive) in any

fifteen-year period. Also, the Service may not waive amortization of previously waived contributions.

The bill provides that in determining whether substantial business hardship exists for single employer plans, the Service is to take into account factors such as whether the employer is operating at an economic loss (which may not be the same as operating at a tax loss), whether there is substantial unemployment or underemployment in the employer's trade or business, and whether it is reasonable to expect that the plan will be continued only if the waiver is granted. The determination of substantial business hardship is not to be limited to an examination of these factors, however, nor must all these factors be met for there to be a finding of substantial business hardship.

In determining whether a waiver should be granted, your committee contemplates that substantial business hardship generally will only occur in situations where the employer did not foresee, and could not reasonably have been expected to foresee (at the time the plan or plan amendment which gave rise to the liability in question was established), the event which causes the business hardship. Your committee contemplates that the Service will grant a waiver of funding normal cost only in unusual situations and will make a separate determination for each instance of waiving normal costs. Additionally, your committee expects that each successive application for waiver will be viewed in light of previous waivers' effects on the financial security of the plan, and that only rarely will the Service waive normal cost for more than one or two plan years based on the same business hardship.

The bill provides that if a waiver of funding requirements is in effect, the plan may not be amended in a way that would increase plan liabilities (through increasing benefits, changing the accrual of benefits, or changing the rate at which benefits become nonforfeitable) as long as there are any unfunded waived contributions outstanding under the plan. It is contemplated that generally other plans of the employer may not be established or amended to establish or increase benefits during a period of waiver. However, your committee contemplates that regulations will provide that an employer may reduce waived liabilities at a rate faster than that provided by the minimum funding requirements. It is also expected that in considering whether a waiver should be granted, the Service will weigh as a factor against the waiver any recent plan amendment (e.g., within three years before the request for waiver) that increases plan liabilities.

It is also contemplated that the Service may apply reasonable conditions to a waiver, and, for example, as a condition of waiver the Service may require plan amendments that eliminate previous recent increases in liabilities. It is recognized that the approval of the Secretary of Labor may be required in some cases, however, to retroactively reduce plan benefits. If a plan were to be amended to increase plan liabilities (or if a condition of waiver otherwise were violated) the amount waived and not yet amortized would immediately become part of the current minimum funding requirement in the year the condition is breached (and consequently this amount would immediately be charged to the funding standard account).

The amount waived by the Service must be amortized in no more than 15 equal annual payments (including interest and principal),

beginning the year after the year the waived contributions were due. If a shorter period were required, after several years of waiver an employer's total contributions could be so high that it would be quite difficult to meet this obligation, particularly if the employer were just returning to financial stability. The bill provides that the amortization of the amount waived may not itself be waived in subsequent years.

Your committee's bill also provides a special relief provision for multiemployer plans, allowing longer periods to amortize past service costs or experience losses. This extension of time may be allowed if 10 percent or more of the employers contributing to the plan demonstrate to the Secretary of Labor that they would experience substantial business hardship if required to meet the otherwise applicable amortization requirements. In this case also, however, a variance is not to be allowed unless application of the minimum funding standards would be adverse to the interests of plan participants in the aggregate. In this case the Internal Revenue Service is to extend the amortization period for the time recommended by the Secretary of Labor, up to a maximum extension of 10 years (and therefore a maximum amortization period of 50 years for past service costs and 30 years for experience losses). In determining whether substantial business hardship exists in the case of multiemployer plans, the Secretary of Labor is to take into account factors such as (but not limited to) whether there is substantial unemployment or underemployment within the industry, whether the sales and profits of the industry are depressed or declining, and whether it is reasonable to expect that the plan will continue only if the waiver is granted.

Your committee believes that a strong showing of hardship must be made for longer extensions to be made available and it is intended that only rarely are extensions of more than 5 years to be allowed. Furthermore, as is the case generally with waivers, if the plan is amended to increase liabilities (through an increase in benefits, a change in the accrual of benefits, or a change in the rate of vesting) during the period that the waived liabilities are unfunded, the waiver is immediately to terminate and the waived liabilities are to become a part of the current year's minimum funding requirements. In addition, reasonable conditions may be applied to extensions of amortization periods. For example, if an extension is allowed for amortizing liabilities a corresponding extension might be appropriate for amortizing corresponding experience gains, or amendments that decrease plan liabilities.

Your committee also recognizes that in some situations it would be inappropriate to require multiemployer plans to meet the basic funding requirements. To meet this problem, the bill provides that the Secretary of Labor may prescribe an alternate funding method for a multiemployer plan, determining the annual contributions and credits to the funding standard account. The Secretary of Labor may also prescribe, under the variance procedure, alternative methods for satisfying the requirements of the bill with respect to changing the multiemployer plan's funding method or plan year.

A variance may be prescribed by the Secretary of Labor only after the Secretary holds a public hearing on the plan in question and allows interested persons, including participants and beneficiaries of the plan, an opportunity to present their views. In this regard, a variance cannot be granted unless the Secretary of Labor is satisfied (and makes a finding) that all plan participants and other interested persons have received adequate notice from the plan administrator

prior to any public hearing on the variance. If a variance is to be granted, the Secretary of Labor, after a public hearing, is to make a finding that the basic funding requirements would increase plan costs to such an extent that there would be a substantial risk that the plan would be terminated, that benefits under the plan would be substantially decreased without the variance, that (if the plan were continued at its current level) employee compensation would be substantially decreased, or that unreasonable administrative burdens would be imposed on the plan under the basic funding requirements. Additionally, the Secretary of Labor is to make a finding that the basic funding requirements (or discontinuance of the plan) would be adverse to the interests of plan participants in the aggregate. A variance is to be allowed by the Secretary of Labor only for such a limited period as is necessary or appropriate to carry out the purposes of the bill, and to provide adequate protection to plan participants and beneficiaries. In addition, the alternative method prescribed by the variance must also conform to these standards so that the method is necessary or appropriate to carry out the purpose of the bill and the method would provide adequate protection to participants and beneficiaries under the plan.

It is intended that generally applications for variances are to be made before the last day for timely contribution of the amount in question, and are to be acted upon expeditiously by the Internal Revenue Service and the Secretary of Labor.

The funding standard account.—As previously indicated, the bill requires that each covered plan must maintain a funding standard account. The purpose of this account is to facilitate the determination of whether a plan has met the minimum funding standard. A plan will meet the minimum funding requirements only if, at the end of each plan year, the account does not, on a cumulative basis, have an excess of charges for all plan years over credits for all plan years. The account is to be charged each year with the normal costs for that year and with the minimum amortization requirements for past service costs, experience losses, and waived contributions for each year. On the other hand the account is to be credited with the contributions made for the year, with amortized portions of cost decreases, resulting from plan amendments and experience gains, and with any waived contributions.

To determine if the plan meets the minimum funding standard, the funding standard account is to be reviewed as of the end of each plan year. However, the bill provides that an employer may contribute to a plan after the end of his taxable year and up to the date of filing his tax return, and these contributions may relate back to his previous taxable year. Thus, for example, where the plan and taxable years are the same this will allow payments made within this time to relate back to the previous plan year for purposes of the minimum funding requirements and the funding standard account. This should provide an employer with sufficient time to reconcile the funding standard account and make the contributions needed to avoid underfunding.

If the account has a positive balance at the end of the plan year, the employer will have contributed more than the minimum funding standard requires. Since income will be earned on amounts in the plan, the bill provides that this positive balance is to be credited with interest,[6] which will reduce the need for future contributions to meet the

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[6] The interest rate or rates to be used to charge or credit the account are to be consistent with the rate or rates used under the plan to determine costs and are to be charged or credited in accordance with regulations.

minimum funding standard. On the other hand, if the funding standard account has a deficit balance, the employer will have contributed less than required under the minimum funding rules, and the deficiency is to be charged with interest. Interest is charged in this case because the deficiency will become larger over time by the amount of income the plan would have earned had the minimum requirements been complied with and therefore the employer will have to pay more to the plan than just the amount he failed to contribute in the plan year. (A plan in existence on the date of enactment will start with a zero balance in its funding standard account on the effective date for the new funding rules applicable to the plan. Similarly, a newly-established plan will start with a zero balance in its funding standard account.)

An example of the operation of the funding standard account for a single employer defined benefit pension plan is described below.

It is assumed that in 1978 the plan is established with a past service liability of $1 million and a normal cost of $70,000. The interest rate used to determine liabilities under the plan for 1978 and for all years in this example is 6 percent per year. It is also assumed that this plan chooses to determine experience gains and losses on an annual basis, rather than every three years, as is generally allowed under the bill. In the first plan year, the employer contributes $138,537. The plan's funding standard account for 1978 will be as follows:

Credits:	
Employer contributions	$138,537
Charges:	
Normal cost	70,000
Amortization—initial past service cost (30 years)	68,537
Total	138,537
Net balance	0

In the year 1979 the plan is amended (effective for 1979), increasing past service liabilities by $100,000. The plan's normal cost for benefits as amended is $75,500. There is a net experience gain of $5,000 over the prior year. In this year, the employer's contribution is $165,975. The plan's funding standard account for 1979 will be as follows:

Credits:	
Employer contributions	$165,975
Amortization—experience gain (15 years)	486
Total	166,461
Charges:	
Normal cost	75,500
Amortization—initial past service liability	68,537
Amortization—past service liability from amendment (30 years)	6,854
Total	150,891
Balance	15,570
Interest on balance	[1] 934
Net balance	16,504

[1] This assumes that all amounts other than interest are charged and credited at the beginning of the year.

In 1980 the normal cost of the plan is $76,200. There is an experience loss for the preceding year of $10,000. The employer contributes $135, 572. The plan's funding standard account for 1980 will be as follows:

Credits:	
Employer contributions	$135, 572
Amortization—experience gain	486
Total	136, 058
Charges:	
Normal cost	76, 200
Amortization—initial past service liability	68, 537
Amortization—past service liability from amendment	6, 854
Amortization—experience loss (15 years)	971
Total	152, 562
Net	−16, 504
Balance from previous year	16, 504
Balance	0
Interest on balance	0
Net balance	0

In case the additional funding standard applies, the funding standard account is to be charged with the excess of the amount to be contributed under the additional funding standard over the amount to be charged as normal cost, amortization of past service costs and experience losses, less the amortized credits for plan amendments that decrease liabilities and for experience gains. (However, to ensure the account is properly maintained, these amounts also are to be charged and credited to the account in this case.)

The funding standard account—special rules—combining and offsetting amounts to be amortized.—Your committee recognizes that the amortization rules may require a plan to keep accounts for amortizing a number of different items. While the amortization charges and credits to be entered in the funding standard account for any one year will net out to a single figure, some may prefer not to maintain a number of different amortization accounts. Therefore, the bill provides that amounts required to be amortized may, at the taxpayer's discretion, be combined into a single amount to be amortized.

The bill provides, pursuant to regulations to be issued by the Secretary of Treasury, that amounts which are amortizable credits and charges may be offset against each other with the balance to be amortized over a period determined on the basis of the remaining amortization periods for all items entering into the credits or charges, whichever is greater. Also, pursuant to regulations, amortizable credits (or amortizable charges) may be combined into one credit or one charge to be amortized over a period determined on the basis of the remaining amortization periods for all items entering into the combined amount. It is expected that if a taxpayer elects to offset or combine amounts to be amortized, this election will apply to all amounts (both charges and credits) required to be amortized for the year of election.

An example of the netting and combining of amortizable amounts by a single employer plan is described below.

It is assumed that the plan has no past service cost. It is also assumed that the plan chooses to determine experience gains and losses on an annual basis rather than every three years as is generally allowed under the bill. In year 1, the plan has an experience loss of $40,000. In year 2, the plan has an experience gain of $15,000. In year 3, the plan has an experience loss of $10,000. In all these years the plan uses a 5-percent per annum interest rate in computing its plan costs.

The $40,000 experience loss that occurs in year 1 must be amortized over 15 years, requiring annual payments of $3,670. The first payment to amortize this amount is made in year 2.

At the end of year 2 (after one payment of $3,670) the remaining unamortized balance of the $40,000 experience loss is $38,145.[7]

The $15,000 experience gain that occurs in year 2 also is to be amortized over 15 years. Alternatively, it may be combined with the remaining experience loss of $38,145, reducing the unamortized loss by ($38,145 minus $15,000) to $23,145. It is expected that under regulations to be issued by the Secretary of the Treasury, the balance of $23,145 may be amortized over 14 years (the remaining amortization period of the greater amount), in equal annual payments of $2,227. At the end of year 3 (after one payment of $2,227) the remaining unamortized balance of the netted experience loss and gain is $21,964 (requiring annual payments of $2,227 over 13 years).

The $10,000 experience loss that occurs in year 3 would be amortized over 15 years in equal payments of $918 per year if it were to be separately computed and amortized. On combining this loss with the previous net experience loss, the base for amortization is ($21,964 plus $10,000) or $31,964. It is anticipated that under regulations to be issued by the Secretary of the Treasury this amount may be amortized by 13 annual payments of $3,145 ($2,227 plus $918) and thereafter one payment of $1,780.

Special rules—the full funding limitation.—In some cases, the difference between the total liabilities of the plan (all accrued liabilities including normal cost) and the total value of the plan assets may be smaller than the minimum funding requirement for the year. For example, this could occur where the plan assets had increased substantially and unexpectedly in value. Where the excess of total plan liabilities over assets is less than the minimum funding requirement otherwise determined, your committee believes that an employer should not have to contribute more than the amount of this excess liability, for upon contribution of this amount the plan will become fully funded. As a result, in this case the bill provides that the amount to be charged to the funding standard account (and to be contributed), is to be limited to the difference between the total liabilities of the plan and the fair market value of the plan assets. Since the full funding limitation reduces the amount otherwise required to be contributed to a plan, it appears appropriate to use the lower of fair market value or the value of plan assets as normally determined. (As discussed below, the value of plan assets as normally determined may be greater than fair market value in certain cases and in such situations use of the normal valuation method could inappropriately limit contributions to a plan.)

[7] This is based on the assumption of a 5 percent interest charge on the unpaid balance during the year.

When the full funding limit applies, the amortization schedule for charges and credits to the funding standard account are to be considered as fully amortized, and these schedules generally are to be eliminated from the calculations under the funding standard account. However, if the plan is amended in later years to increase plan liabilities, a new amortization schedule would be established with respect to this increase in liabilities. For years after the full funding level is reached, the funding standard account will continue to be charged with the normal cost of the plan. Consequently, unless asset values increase correspondingly with the increase in plan liabilities, eventually the full funding limitation will not be applicable and the employer will have to make contributions to the plan to meet the minimum funding requirements.

If the employer fails to make the required contributions in a year in which the full funding limitation is applicable, the excise tax (described below) on underfunding in that year is to be based only on the amount that should have been contributed, given the full funding limitation.

For the purpose of calculating the full funding limitation, the bill provides that plan liabilities (including normal cost) are to be determined under the funding method used by the plan to determine costs for the year, if the liabilities can be directly calculated under this funding method. However, if this cannot be done under the plan's funding method, in order to allow the full funding limitation to apply, the bill provides that the accrued liabilities are to be calculated under the entry age normal method, solely for the purpose of determining the application of the full funding limitation.

Whether the full funding limitation applies generally is to be determined at the end of the plan year, after all plan liabilities for that year have accrued. For purposes of the full funding limitation, the value of plan assets generally is to be determined as of the usual valuation date for the plan. Since, as discussed above, contributions generally can be made to a plan after the end of a plan year and yet relate back to the previous plan year, there should be no timing problem with respect to such year-end calculations.

Special rules—money purchase pension plans.—Generally, the funding standard account for money purchase pension plans is to be charged annually with the amount that must be contributed for the year under the plan formula, and is to be credited with the amount that is paid. As a result, employers who have these plans must annually make the payments required under the plan. If the employer does not make sufficient contributions to meet the minimum funding requirements, he is to be subject to the excise tax described below. However, the Internal Revenue Service may waive the contributions required, in the same manner as it may waive these contributions for defined benefit pension plans.

For purposes of the funding rules, a "target benefit plan" generally is to be treated as a money purchase pension plan. However, a plan (for example, a so-called Taft-Hartley plan) that provides an agreed level of benefits and a specified level of contributions is not to be considered a money purchase pension plan if the employer or his representative participated in the determination of the benefits.

Special rules—collectively bargained plans and plans of controlled groups.—Plans maintained pursuant to a collective bargaining agreement between employee representatives and one or more employers often provide for a predetermined level of contributions over a period longer than 12 months. Your committee believes that for the funding requirements to be workable in these cases, employers generally must be allowed to base their contributions on the bargained and agreed upon basis. Consequently, for purposes of maintaining the funding standard account, a plan year of a plan maintained pursuant to a collective bargaining agreement generally is to be considered as extending for the term of the collective bargaining agreement. This provision is intended to adapt the minimum funding standard to those plans where contributions are fixed by contract in accordance with a fixed standard, such as a specific dollar amount per hour of covered employment or a specific dollar amount per ton of coal mined.

Under such a plan if the actuarial assumptions were reasonable and the actuarial calculations were correct as of the beginning of the term of the agreement, and the agreed contributions were made, there would be no deficiency in the funding standard account for the term of the collective bargaining agreement. Any experience loss could be made up by adjustment of the contribution rate or the level of benefits for the term of the next agreement. The special definition of plan year would not affect the required periods of amortization or the computation of the excise tax; also, with respect to collectively bargained plans it is intended that experience gains and losses generally are to be determined at the end of each contract period, or at the end of every 3 calendar years if more appropriate for the particular plan.

The bill also provides that, to meet the needs of other collectively bargained plans, the Secretary of the Treasury may issue regulations that provide other periods that may be treated as plan years. For example, it is understood that some multiemployer, collectively bargained plans are based on a number of contracts, each expiring at different times. It is expected that in this case the regulations would provide that the plan could use a 12-month period (or perhaps longer period if needed) for the plan year. In this case, when experience losses are determined, the plan trustees could arrange for an increase in contributions for the next year, or could arrange for a decrease in future benefits to allow negotiations to occur later to increase contributions. Additionally, as discussed above, limited retroactive plan amendments would be allowed without the approval of the Secretary of Labor for up to 2 years after the end of the plan year, so benefits could be reduced to a limited extent if needed to avoid a funding deficiency.

The bill also provides that in the case of collectively bargained plans, the minimum funding standard is to be determined as if all participants in the plan were employed by a single employer. The bill provides the same treatment for deduction purposes. This merely restates existing law.

In the case of a plan adopted by more than one corporation which is a member of a controlled group of corporations (within the meaning of section 1563(a) of the Code without regard to section 1563 (a)(3)(C)) the bill provides that the minimum funding standard

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and the excise tax on underfunding and the new rules with respect to maximum deduction limits (described below) are to be determined as if all members of the controlled group which adopted the plan were a single employer. Allocations of the minimum funding requirements, excise tax liability and deduction limits between members of the controlled group are to be determined under regulations prescribed by the Secretary of the Treasury.

Exclusions from coverage—insured plans.—If a pension plan is funded exclusively with certain individual insurance contracts, the bill provides that the plan is not subject to the minimum funding requirements. Your committee believes that if qualified insurance contracts are used to fund a plan and payments are timely made, the plan will be properly funded.

The contracts that are to qualify for this treatment are level annual premium individual insurance contracts where the premium is paid from the first date of an individual's participation in the plan (and from the time an increase in benefits becomes effective) and is not paid beyond the individual's retirement age. Also, the benefits under the plan must be the same as the benefits provided by the individual contracts at normal retirement age. In addition, the benefits must be guaranteed by the insurance company to the extent that premiums are paid. For the contracts to qualify, the insurance company must be licensed to do business in the State where the plan is located. Furthermore, premiums for all plan years must have been timely paid or the policy reinstated. In addition, rights under the contracts must not have been subject to a security interest during the plan year, and no loans must have been made on the policy during the plan year.

If any of these requirements are not satisfied, then the normal rules with respect to the funding standard must be followed. If a plan is initially funded with qualified insurance contracts, but, *e.g.*, a contract payment is not made, then the plan will become subject to the minimum funding rules and an excise tax may be owed (as described below) if the plan funding falls below the minimum standard. (Generally, if the payments had been timely made until this time, the funding standard account for the year of nonpayment would start with a zero balance, the accrued plan liabilities and properly amortized amounts would be charged to the account for the year in question, and any excise tax owed would be based on the net charges to the funding standard account for that year.)

Exclusions from coverage—profit-sharing plans, etc.—Under present law profit-sharing and stock bonus plans do not require a definite predetermined formula for determining the portion of profits to be shared annually with the employees. Since the contributions to these plans may be varied substantially year-by-year under the plan, your committee believes that it is inappropriate for profit-sharing and stock bonus plans to be governed by the minimum funding standard.

On the other hand, employer contributions under money purchase pension plans must be definitely determinable and fixed without being geared to profits. It is appropriate for these plans to be governed by the minimum funding standard since the application of this standard (as under present law) will require the employer to make definitely determined contributions to the plan.

Your committee intends that plans generally are to be considered money purchase pension plans which meet the "definitely determinable" standard where the employer's contributions are fixed by the plan, even if the employer's obligation to contribute for any individual employee may vary based on the amount contributed to the plan in any year by the employee. For example, it is expected that a matching plan which provides that an employer will annually contribute up to 6 percent of an employee's salary, but that this contribution will be no more than the employee's own (nondeductible) contribution, will meet the "definitely determinable" criteria. In this case, the employer's contributions are set by the plan, will not vary with profits, and cannot be varied by the employer's action (other than by a plan amendment). (Of course, the plan must meet the nondiscrimination and other requirements of the Code to be qualified.)

Your committee understands that some plans are based solely on contributions from participating employees, without contributions of employers. In this case, your committee believes it would be inappropriate to make the employer responsible for the contributions of his employees. Consequently, where the plan has not provided for any employer contributions at any time after the date of enactment of the bill, the plan is to be exempt from the minimum funding standards and the excise tax on underfunding. Similarly, it would be inappropriate for the employer to be responsible for voluntary employee contributions, and consequently, voluntary contributions (and benefits attributed thereto) are to be disregarded for purposes of the minimum funding standard and the excise tax on underfunding.

Exclusions from coverage—government plans and church plans.—It has been argued that government plans should be exempt from the funding standards since the taxing power can be viewed as a practical substitute for these standards. On the other hand, your committee is concerned with reports that in the case of a number of governmental units, such generous pension promises have been made and so little funds have been set aside currently, that the practical likelihood of imposing sufficient taxes to pay those benefits may be open to question. In view of this conflict, your committee does not believe present law should be changed at this time regarding government plans which are qualified under the Federal tax laws.

The bill, therefore, provides that any tax-qualified government plan that meets the requirements of existing law with respect to funding will be exempt from the new minimum funding requirements. (This generally means that these plans must currently contribute normal cost plus interest on unfunded past service cost.) This exemption will apply both to existing and newly-established government plans.

In view of the information received with respect to possible underfunding problems of the plans, the bill provides that your committee and the Committee on Education and Labor are to study whether plans maintained by Federal, State, or local governments are adequately funded (taking into account the new minimum funding standards of the bill). Your committee and the Committee on Education and Labor are to submit to the House of Representatives the results of this study together with recommendations on funding standards for government plans by December 31, 1976.

Under the bill, government plans are plans established and maintained for their employees by the United States Government, or by the government of any State or political subdivision of a State, or by any agency or instrumentality of such governments. Also, except for the study described above, a plan to which the Railroad Retirement Act of 1935 or 1937 applies is to be treated as a government plan.

The bill also generally exempts church plans from the new funding requirements if these plans meet the funding requirements of present law. However, a church plan may elect to have all the provisions of the Internal Revenue Code regarding participation, vesting, funding, and form of benefit apply. If such an election is made, then the minimum funding provisions will apply to the plan. (Under the bill, once it is made, the election is irrevocable.)

A church plan is defined under the bill as a plan established and maintained by a church (or convention or association of churches) that is tax-exempt under section 501 of the Code. However, a church plan does not include a plan established and maintained primarily for the benefit of persons employed in connection with an unrelated trade or business. Nor does a church plan include a multiemployer plan if one or more employers are not tax-exempt under section 501 of the Code as a church (or convention or association of churches). With respect to plans in existence on January 1, 1974, if the plan applied on that date to employees of any tax-exempt agency of a church (or convention or association of churches) which established and maintained the plan, then the employees of the agency are to be treated as employees of the church (or convention or association of churches).

Coordination of regulations.—In order to minimize administrative problems, and ensure insofar as possible that plans which satisfy the requirements of the Internal Revenue Code also meet the pension standards which are to be administered by the Labor Department, and vice versa, the bill provides that the Treasury regulations with respect to the participation, vesting, and funding requirements of the bill (other than regulations to enforce the antidiscrimination requirements of sec. 401(a)(4) of the code) are to be effective for plan years beginning after December 31, 1975, only if approved by the Secretary of Labor. Where the bill's provisions apply before that date (as in the case of new plans and plans which elect earlier dates) then the regulations may be prescribed without the necessary approval of the Secretary of Labor. However, these regulations are not to apply beyond the December 31, 1975, plan year cutoff date.

Actuarial considerations—enrollment of actuaries to practice before the Internal Revenue Service.—Defined benefit pension plan costs generally are actuarial estimates of future costs of the plan. In estimating pension costs, actuaries must make assumptions ("actuarial assumptions") about a number of future events, such as the rate of return on investments ("interest"), employees' future earnings, and employee mortality and turnover. Actuaries also must choose from a number of methods to calculate future plan liabilities. The amounts required to fund any given pension plan can vary significantly according to the mix of these actuarial assumptions and methods. As a result, the assumptions and methods used by actuaries are basic to the application of minimum funding standards for defined benefit pension plans.

Your committee believes that actuaries who perform services for qualified pension plans and report to the Internal Revenue Service regarding these plans should meet a reasonable standard of competence and be held to a standard of reasonableness in choosing their methods and assumptions. The bill requires that the actuarial assumptions which are used are to be reasonable in the aggregate; this restates present law. However, there is no existing government regulation of the actuarial profession as there is, for example, for lawyers and accountants. Te resolve this problem, the bill provides that standards and qualifications are to be established for enrolling actuaries to practice before the Internal Revenue Service (with regard to actuarial matters only).

Under the bill, the standards and qualifications to be satisfied for any person applying after 1975 for enrollment as an actuary are to include education and training in actuarial mathematics and methodology, and an appropriate period of actuarial experience. The education and training requirement is to be evidenced by a degree in actuarial mathematics or its equivalent from an accredited college or university, successful completion of an examination in actuarial mathematics and methodology to be given by the Secretary of the Treasury, or successful completion of other actuarial examinations deemed adequate by the Secretary. Your committee anticipates that actuaries also will be enrolled to practice before the Department of Labor with respect to pension plans. In order to make the enrollment requirements uniform for practice before the Internal Revenue Service and the Department of Labor, regulations issued by the Secretary of the Treasury with respect to standards and qualifications for actuaries are to be effective after December 31, 1975, only if approved by the Secretary of Labor. (Similarly, your committee anticipates that regulations issued by the Secretary of Labor with respect to qualification of actuaries are to be effective after that date only if approved by the Secretary of the Treasury.)

The bill provides a special rule with respect to individuals applying for enrollment before 1976. For such individuals, the standards and qualifications for enrollment are to include a requirement for an appropriate period of responsible actuarial experience or of responsible experience in the administration of pension plans.

Your committee contemplates that the procedure for enrollment of actuaries will appropriately recognize the need for independent, competent professional work, and consequently practice without enrollment will be allowed only in unusual cases.

Your committee intends that the Secretary also establish duties relating to practice before the Internal Revenue Service by actuaries who are enrolled to practice. These duties may be similar to those required for attorneys, certified public accountants, and others who practice before the Internal Revenue Service, appropriately modified to take account of the special requirements of actuarial practice. For example, it is contemplated that the regulations will require an enrolled actuary to notify the Secretary if he discovers that an actuarial statement he prepared was not filed with the Secretary.

In formulating enrollment regulations (including regulations relating to application for enrollment after 1975), it is your committee's intent that the Secretary recognize to the extent feasible the varying degrees of actuarial skill required in the examination of different types of plans. For example, it is understood that many smaller and simpler plans are administered on the basis of standard actuarial tables which are widely published and on the basis of standard earnings assumptions. In these cases your committee has been informed that contributions have been adjusted from time to time to reflect deviations between actual plan experience and the standard actuarial and interest assumptions used. To the extent feasible, it is anticipated that the Secretary will make it possible to use such standard tables, etc., in the examination of these smaller and simpler plans, and make it possible for this work to be done by persons with the needed education and experience in pension plan administration whether or not their training includes the highest level of actuarial skills. The limited number of persons with a high level of actuarial skills makes it desirable that the standards acceptable for those examining smaller and simpler plans not be as restrictive as in the case of those examining the larger plans.

It is contemplated that the Secretary of the Treasury would reserve the power to suspend from practice before the Service any person enrolled to practice as an actuary after due notice and opportunity for hearing. Discipline might be imposed upon an enrolled actuary shown to be incompetent, or who does not comply with the rules and regulations established by the Secretary. Your committee intends that proceedings brought against enrolled actuaries will be instituted in the same general manner as proceedings against others practicing before the Service and will follow the same general procedure as other disciplinary proceedings. Generally, disciplinary proceedings would involve a complaint served on the actuary, an opportunity for answer, and an evidentiary hearing before a hearing examiner who would render a decision (appealable to the Secretary of the Treasury). An actuary involved in such a proceeding would have a right to be represented by counsel. It is contemplated that the discipline imposed could include suspension from practice before the Service, and that under appropriate circumstances a petition for reinstatement could be granted.

Actuarial considerations—reports of actuaries.—The Internal Revenue Service must receive detailed information on the actuarial assumptions and methods used to be able to evaluate whether costs of a qualified defined benefit pension plan have been properly determined. To resolve this problem, the bill requires periodic actuarial reports to be filed with the Internal Revenue Service by plan administrators of defined benefit plans subject to the new minimum funding standard. Consequently, actuarial reports will not be required for plans funded through qualified insurance contracts, and profit-sharing and money purchase plans, among others. However, actuarial reports will be required of any defined benefit plan subject to the new minimum funding standard, whether or not it remains tax-qualified.

Actuarial reports are to be made for the first plan year (or the first plan year to which this section applies) and every third year there-

after. Under the bill the Secretary may require more frequent reporting if necessary. The Secretary might require more frequent reporting in particular cases (for example, where a plan is to determine experience gains or losses more frequently than every three years) or in all cases if necessary. If the plan administrator fails to timely file the required actuarial reports, he will be subject to a penalty of $1,000 for each such failure unless it was due to reasonable cause.

Under the bill, the plan administrator generally is the person designated as such by the plan instrument. If no administrator is so designated, the administrator will be the employer for a single employer plan, and will be the joint board of trustees, etc., for a plan maintained by several employers or several employers and an employee organization. In other cases, the plan administrator will be the person prescribed by regulations issued by the Secretary of the Treasury.

The periodic actuarial reports must be prepared and signed by actuaries enrolled to practice before the Internal Revenue Service. The reports must include a description of the plan, a description of the funding method and actuarial assumptions used to determine costs under the plan, a certification as to whether the plan is adequately maintaining a funding standard account, and any other information regarding the plan as the Secretary may require. For example, it is contemplated that the periodic reports will include detailed information on the basis for any change in actuarial assumptions.

The actuary who prepares the reports must certify that, to the best of his knowledge, the report is complete and accurate. He must also certify whether, in his opinion, the funding method is reasonable and the actuarial assumptions used to determine the plan costs are reasonable in the aggregate. It is contemplated that the actuary will be subject to discipline and may be suspended from practice before the Internal Revenue Service if he falsely certifies a report.

Actuarial considerations—actuarial assumptions, methods, valuation of assets.—Since actuarial calculations determine plan costs, the bill includes several basic rules regarding these calculations. Under the bill, plan liabilities must be determined on the basis of actuarial assumptions that, in the aggregate, are reasonable. Your committee recognizes that frequently there is a range of actuarial assumptions which may be appropriate for determining the costs of a defined benefit pension plan, and the choice of the appropriate assumptions is very much a matter of judgment. In this circumstance, an employer may attempt to substitute his judgment for that of his actuary, which may lead to situations where plan costs are not being independently determined by an actuary. Your committee believes that it is inappropriate for an employer to substitute his judgment in these matters for that of a qualified actuary, and it is contemplated that if such a circumstance were to arise an actuary would have to refuse giving his favorable opinion with regard to the plan.

Since the actuarial assumptions used must be reasonable in the aggregate, it is anticipated that, on audit, the Internal Revenue Service will (as presently) require a change of assumptions where they do not meet this standard. However, unless the assumptions used are substantially unreasonable, it is contemplated that generally the Service will not require a change of assumptions to be made effective for years prior to the year in which the audit is made.

Under the bill, plan liabilities are to be determined under the funding method used generally to determine costs under the plan. In addition, since a change in the actuarial method used can have a substantial effect on a plan's cost, the bill also provides that the Internal Revenue Service must approve, pursuant to regulations, a change in the plan's funding method before the new method may be used to calculate plan costs. Similarly, approval must be obtained for a change of the plan year before the new year may be used by a plan. It is expected that the regulations under this provision will establish rules similar (but appropriately modified) to the regulations governing approval of changes in accounting methods. Therefore, it is expected that generally before a change in actuarial method or plan year will be approved a taxpayer must establish a substantial business purpose for the change and that consideration will be given to all the facts and circumstances with respect to the change. It is contemplated that a change in funding method is to be allowed only if it does not significantly adversely affect the funding of the plan. Also, your committee contemplates that upon approving a change in actuarial method or plan year, conditions are to be established to prevent distortion of income or distortion of funding of the plan.

Your committee recognizes that there are a substantial number of accepted methods of valuing assets of pension plans and many of these methods are designed to take into account market value and also to level out short-run market swings. Your committee believes that such valuation methods are appropriate since sharp, short-run variations in asset values could significantly affect the required funding if fair market value were the only accepted method of valuing assets for funding purposes. This would be inappropriate since pension plans are funded to meet the needs of the long-run, frequently over an employee's whole working life. On the other hand, your committee also recognizes that pension plans must value assets in a way that takes into account market value. Otherwise, there may be no relation between a plan's funding program and the assets actually available to pay benefits.

Under the bill, generally plan assets are to be valued on the basis of any reasonable actuarial method of valuation that takes into account fair market value, pursuant to regulations to be issued by the Secretary of the Treasury.

Your committee anticipates that fair market value generally would be an acceptable valuation method. On the other hand, it is contemplated that using cost or book value without taking account of changes in fair market value would not be an acceptable valuation method.[8] However, it is intended that acceptable valuation methods may include (but not be limited to) the use of a moving average (over, *e.g.*, five years), or increasing asset values each year by a stated percentage of the previous year's asset value under the assumption that an even long-range appreciation will occur (in some cases, this increase may be reduced by realized appreciation or other income received from the asset). Another alternative method may be to capitalize the current amount of income from each asset as a perpetuity, using the plan

[8] However, in a case where fair market value tended to fluctuate around cost, a reasonable actuarial method may determine that cost is the appropriate value.

valuation rate of interest. For a valuation method to be reasonable, it is expected that the asset values obtained under the method of valuation used are to bear a reasonable relationship to fair market value, and that if fair market value and the value under the method used differ significantly over a period of several years that the value under the plan would be adjusted accordingly. However, where an unacceptable method is being used by an existing plan, it is contemplated that the Service will allow a transition so that the plan will have time to write up its asset values. Furthermore, it is expected that the method chosen must be used consistently by the plan.

It is also expected that the regulations will provide reasonable methods for valuing life insurance or annuity contracts, which will recognize the special nature of such contracts for valuation of pension plans.

Your committee also recognizes that often a pension plan will acquire bonds or other debt instruments as a long-term investment to be held until maturity. In that event, it would seem inappropriate to require the plan to change its valuation of the bond in accordance with market fluctuations. Therefore, the bill provides that a plan may elect to value its bonds or evidence of indebtedness on an amortized basis. At the election of the plan, the amortization may run from initial cost at purchase to par value at earliest call date or to par value at maturity. This election is to be made at the time and in the manner prescribed by regulations. The election is to be revocable only with the consent of the Internal Revenue Service and is to apply to all bonds and evidences of indebtedness owned by the plan. Although the bill explicitly recognizes this as one reasonable method of valuation that a plan may use to value bonds or evidences of indebtedness, other valuation methods may be used for these assets. (Also, it may be reasonable to use the method explicitly recognized for bonds or indebtedness for valuing other assets.)

Actuarial considerations—actuarial advisory board.—Your committee believes that the Secretary of the Treasury could be significantly aided in resolving a number of problems regarding actuaries and actuarial assumptions, etc., if he had the advice of experienced actuaries drawn from different areas of practice. Accordingly, your committee intends that the Secretary establish an advisory board chosen from among experienced actuaries in government, teaching, business and insurance, and independent consulting practice.

Your committee intends that the board advise the Secretary in such matters as the enrollment system for actuaries, reasonable standards and criteria for determining actuarial assumptions to be used for plans, and determining what constitutes generally accepted principles of actuarial practice.

Enforcement.—The sanctions under present law on the failure to meet the minimum funding requirements appear to have little effect on an employer's decision to fund a plan at the required minimum levels. To resolve this problem, the bill imposes an excise tax on the employer if he fails to fund the plan at the minimum required amounts (only if a waiver has not been obtained).

The tax initially is to be 5 percent of the accumulated funding deficiency—the excess of charges over credits in the funding standard account—at the end of the plan year. If a plan year ends with an ag-

gregate funding deficiency, the employer will owe a 5 percent excise tax on the deficiency and that tax may be due for the taxable year of the employer with or within which the plan year ends. Furthermore, a deficiency in a prior year will continue in later years (and will be increased with interest), until paid. The 5 percent tax will apply to each year (of the employer) in which there is a funding deficiency at the end of the plan year. For example, if there is a funding deficiency in 1978 that is not corrected until 1980, there will be a 5 percent tax on the 1978 deficiency and a 5 percent tax on the 1979 deficiency (which will be the same as the 1978 deficiency plus interest).[9] If the deficiency is corrected within the time allowed for contributions for the year 1980, there would be no 5 percent tax for 1980.

In any case in which the 5 percent tax is imposed and the accumulated funding deficiency is not corrected within the correction period allowed after notice by the Internal Revenue Service, a 100 percent tax equal to the accumulated funding deficiency (to the extent not corrected) is to be imposed on the employer. In accord with present law respecting the excise taxes with regard to private foundations, neither the 5 percent nor the 100 percent taxes are to be deductible.

As discussed above, the bill provides that an employer's contributions to a plan that are made by the time for filing its tax return can relate back to the year of that return. Consequently, generally an employer will have a period of time after the close of the plan year to contribute to the plan and avoid the excise tax on underfunding. In addition, the bill provides that for purposes of the minimum funding requirements, a plan can be amended to a limited extent without the approval of the Secretary of Labor after the close of the plan year, but by the time for filing the employer's return for the taxable year with or within which the plan year ends (in the case of multiemployer plans, the amendment may be within two years of the close of the plan year). This allows limited retroactive decreases in plan benefits so liabilities for the excise tax can be reduced or eliminated when there has been a mistake in estimating the amount of benefits that an employer could properly fund.

As discussed above, under certain conditions a plan also may be retroactively amended with the approval of the Secretary of Labor for earlier years. Such a retroctive amendment is not, however, to eliminate a funding deficiency for purposes of the initial 5 percent tax, although it may constitute correction for purposes of the 100 percent tax.

The minimum period allowed for correcting any funding deficiency after notice from the Service is 90 days from the date of mailing a notice of deficiency with respect to the 5 percent tax. However, this period may be extended for the time that the Internal Revenue Service determines is reasonable and necessary to eliminate the accumulated funding deficiency (and is automatically extended for any period in which a deficiency cannot be assessed under section 6213(a) relating to petitions to the Tax Court). It is intended that the Secretary require significant reasons before granting an extension under this provision.

[9] Of course, if an employer fails to contribute a plan's normal cost in any year, that amount will not thereafter become a past service cost (or experience loss to be charged in amortized amounts. The funding standard accounts will show as a deficiency subject to tax each year until corrected the unpaid normal cost plus interest (as well as any unpaid past service cost, plus interest).

It is intended that reasonable conditions may be applied to any extension of time, such as (but not limited to) a requirement that regular payments be made toward funding the deficiency and such as not allowing a plan amendment that increases plan costs until the deficiency is paid off. Correction generally will be made by paying off the principal amount of the funding deficiency plus interest to the date of payment, at the rate used to determine plan costs for the years the deficiency remained unpaid.[10]

In the usual case, the excise taxes will be owed when a deficiency is showing in the plan's funding standard account. However, as under present law, where the actuarial assumptions used in determining the minimum funding requirements are unreasonable in the aggregate, the Service may on audit retroactively (for open years) require a change in these assumptions. Such a change may result in a change in the plan's funding standard account. If a funding deficiency occurs as a result of such change, an excise tax may be levied. It is expected that retroactive changes of actuarial assumptions would occur only where the initial assumptions used were substantially unreasonable.

The bill provides special rules for applying the excise tax to collectively bargained plans. Generally, the "plan year" for a collectively bargained plan will be considered to be the contract period. If, at the beginning of that contract period, the actuarial assumptions used in setting the plan contributions are reasonable in the aggregate, and the actuarial calculations are correct, then generally no excise tax will be owned by employers who timely pay their appropriate share of the plan contributions during the contract period. However, to the extent that plan contributions are not timely paid, the funding standard account may show a deficiency and an excise tax would be owed. (The excise tax would be owed on the basis of the employer's taxable year and not on the basis of the plan year which runs for the period of the contract.) When a plan has such an accumulated funding deficiency, generally the tax will be imposed only on the employers who do not timely contribute, since the underfunding is the result of their failure to contribute.

At the end of a contract period, even assuming that all contributions were timely made, a collectively bargained plan can have experience losses. In that event, the next contract must provide for the experience loss. This generally will be by higher contributions, though it could also be by amending the plan to decrease benefits. If appropriate adjustments in contributions or benefits do not occur, then the plan will have a funding deficiency and an excise tax will be owed. Liability for this tax is to be determined first on the basis of failure to meet the required employer contributions under the plan, and then on the basis of respective liabilities for contributions under the plan.

The bill also provides special rules for applying the excise tax to a controlled group of corporations. Under the bill, if corporations that are members of a controlled group (defined by section 1563(a) of the Code without regard to section 1563(e)(e)(C)) adopt a plan, the excise tax on underfunding is to be determined as if all the corporations were a single employer, and the tax is to be allocated to each corportion in accord with regulations prescribed by the Secretary of

[10] It is contemplated that if a plan becomes subject to the full funding limitation after it has an accumulated funding deficiency that no correction will be required, but the nondeductible 5 percent first level excise tax will be owed for each year in which there is an accumulated funding deficiency.

the Treasury. It is expected that generally the minimum funding requirements will be allocated proportionately to the relative amount of plan liabilities attributed to the employees of such corporation and any funding tax will be allocated in proportion to failures to make these required minimum contributions.

Maximum deductions for plan contributions.—If an employer wishes to deduct contributions to an employee benefit plan which are greater than the minimum contributions required, the amount deductible will be subject to the maximum deduction limits.

Contributions to a pension plan presently are deductible under three alternative provisions, the "5 percent" method which allows deductions to be taken for contributions not in excess of 5 percent of the annual compensation of the covered employees (sec. 404(a)(1)(A) of the code), the "level cost" method (sec. 404(a)(1)(B) of the code), and the "normal cost" method (sec. 404(a)(1)(C) of the code).

Unlike the "level cost" method and the "normal cost" method, the 5-percent limitation on contributions is often unrelated to the funding needs of the pension plan, for it frequently is not determined by the level of benefits provided by the plan. Consequently, the 5-percent method has allowed employers to contribute and deduct more than is reasonably needed to fund a pension plan.

The bill repeals the 5-percent deduction limitation (present sec. 404(a)(1)(A) of the code). Thus, deductible contributions under a qualified pension plan generally are to be limited under either the "level cost" or the "normal cost" methods. However, in place of the 5 percent limitation, the bill adds a new sec. 404(a)(1)(A) (discussed below) relating to contributions needed to meet the minimum funding standard.

The "normal cost" method (sec. 404(a)(1)(C) of the Code) presently allows a maximum deduction of normal cost plus 10 percent of unfunded past service costs. The 10 percent figure includes interest as well as principal, and therefore this method is not the same as 10-year amortization.[11]

To put the minimum contribution requirements and maximum deduction limitations on a comparable basis, the bill amends the "normal cost" deduction limitation rules to allow a maximum deduction of normal cost plus amounts needed to amortize past service costs in ten equal annual payments (including principal and interest). Under this provision, initial past service costs could be amortized over ten years from the date established (past service cost established by plan amendment could be amortized over ten years from the amendment, and experience losses could be amortized over ten years from the date they are determined). The maximum deduction for any year would be the amount determined under ten-year amortization and no more than this amount could be deducted in any year even though less than this amount were contributed in a prior year.

Your committee recognizes that under the minimum funding rules an employer might have to contribute more than the maximum allowed

[11] Since the 10 percent figure includes interest as well as principal, it is estimated that, depending upon the interest rate, an employer usually may deduct amounts needed to fund accrued past service costs over 12–14 years.

for deduction under the "level cost" or "normal cost" limits. For example, this could occur if the employer corrected a substantial funding deficiency for a prior year. Consequently, the bill provides that in such cases if the minimum funding standard requires a contribution to a tax-qualified pension trust which is greater than the maximum amount otherwise deductible, the amount contributed to satisfy the minimum standard is to be deductible. However, this rule does not apply to contributions to plans that are subject to the minimum funding standard but are not tax-qualified. Additionally, contributions must meet the requirements of sec. 162 before being deductible under sec. 404.

In order to put the minimum funding requirements and maximum deduction limits on a compatible basis, the bill also provides that the funding method and actuarial assumptions used to determine the amount deductible are to be the same as the method and assumptions used to determine the minimum funding required. In addition, the maximum amount deductible generally cannot be more than full funding limitation of the minimum funding standard; otherwise, deductions would be allowed for contributions greater than needed to fund the plan.

Present law generally allows deductions for contributions to overlapping combinations of pension, profit-sharing, and stock bonus plans of up to 25 percent of compensation paid or accrued to all the employees who are beneficiaries under the plans. In some cases, where there has been a previous contribution greater than the deductible limits, the deduction can be up to 30 percent of aggregate compensation. In accordance with the decision to limit contributions to defined contribution plans to 25 percent of employee compensation, the bill provides that maximum deductions for contributions to overlapping plans are to be 25 percent of aggregate compensation, and the provision for an additional 5 percent for carryovers is to be eliminated.

Under present law, contributions by an accrual basis taxpayer made by the time for filing his tax returns may be treated as paid in the year for which the return is due. This allows taxpayers time after the close of their taxable year to determine the amount of their contributions to be made to a plan. The bill extends this rule to cash basis taxpayers.

With regard to collectively bargained plans, the bill (as present law) provides that the maximum deduction limits are to be determined as if all participants in the plan were employed by one employer. Further, the bill provides that the amount contributed by each employer under a collectively bargained plan will not exceed the maximum deduction limitation if the anticipated employer contributions for the plan year are no greater than the limitation. With respect to a plan adopted by several corporations that are members of a controlled group, the maximum deduction limitations are to be determined as if all employers were a single employer, and deductible amounts are to be allocated in accordance with regulations to be prescribed by the Secretary of the Treasury.

Effective dates

The new minimum funding requirements and the new rules with respect to deductions generally are to apply to plan years beginning after the date of enactment of the bill. However, with respect to

plans in existence on January 1, 1974, the new funding standards and deduction rules are to apply to plan years beginning after December 31, 1975. If a plan existing on January 1, 1974, is maintained by a labor organization exempt under section 501(c)(5) of the Code exclusively for the benefit of the employees of the organization, the new funding rules are to apply to this plan for plan years beginning after the later of (1) the last day of the second convention of the labor organization occurring after enactment of the bill (but not later than December 31, 1980) or (2) December 31, 1976.

If an existing plan is maintained under a collective bargaining agreement, then the new funding standard and deduction rules are to apply to plan years beginning after December 31, 1980, or the date on which the agreement terminates, whichever is earlier (but in no event sooner than plan years beginning after December 31, 1976). The date of termination is to be determined without regard to any extension agreed to after the date of enactment of the bill.[12]

Plans in effect on January 1, 1974, may elect to have the Internal Revenue Code provisions relating to participation, vesting, funding, and form of benefit apply to plan years beginning before the otherwise applicable effective date and all plan years thereafter. The election is to be made by the plan administrator and is to be irrevocable.

The provisions of the bill defining governmental plan, church plan, multiemployer plan, and plan administrator are to be effective on the date of enactment.

The provision of the bill establishing enrollment procedures for actuaries is to become effective upon enactment. The provisions relating to filing actuarial reports are to become effective at the same time as the general provisions relating to the new minimum funding rules.

Revenue effect

It appears clear that the new funding provisions will give rise to additional income tax deductions by employers in the immediate years ahead. However, the statistical data available do not provide any method for determining the size of this revenue effect. It is believed, however, that it will not represent a large revenue loss. In the longer run, it appears unlikely that the greater immediate funding expected under this bill will have any appreciable effect on revenues. Although funding occurs earlier under the bill than under present law, the income tax deductions taken by employers under the bill would for the most part ultimately be taken under the present funding rules.

D. Administration and Enforcement

(Secs. 1041, 1051, and 1052 of the bill, and secs. 7476 and 7802 of the Code)

Your committee's bill relies heavily on the tax laws in order to secure compliance with the new requirements that it imposes on employee pension, profit-sharing and stock bonus plans. The bill, in providing new standards of coverage, vesting, and funding continues the administration of these provisions in the Internal Revenue Service.

Many aspects of compliance have been discussed in conjunction with the various substantative provisions described in the bill. This includes,

[12] For statement relative to the termination of a collective bargaining agreement, see the discussion under the effective date with respect to "A. Participation" above.

for example, the new excise taxes imposed with respect to underfunding.

In a number of other ways, however, efforts have been made to improve the provisions of existing law. The provisions of this type discussed here are the new office set up in the Internal Revenue Service to administer the new standards in this bill as well as the authorization of funds to provide for this administration. In addition, the bill deals with the problem raised as to the absence under existing law of a judicial review for letters of determination as to the qualification status of plans. Procedures are also set out whereby employees can question the qualification of plans.

1. INTERNAL REVENUE SERVICE

Present law

Under present law, the national office of the Internal Revenue Service is organized on a general activity basis rather than a tax or subject basis.[1] At the present time, there are six Assistant Commissioners of Internal Revenue in the national office whose activities are broken into the following categories: collection and taxpayer service, compliance (including auditing), inspection (internal security), planning and research, technical (rulings) and administration (housekeeping). Similarly, the field offices of the Service are organized on a similar line. Within each of these broad categories there are Service units whose jurisdictional breakdown is by subject matter under examination. For example, the Miscellaneous and Special Provisions Tax Division under the Office of Assistant Commissioner (Technical) contains an Actuarial Branch, a Pension Trust Branch and an Exempt Organization's Branch. However, various other aspects of national office employee benefit plan and tax exempt organization administration are under the Office of Assistant Commissioner, Accounts Collection and Taxpayer Service and the Office of Assistant Commissioner, Compliance.

General reasons for change

Concern has been expressed in the case of the administration of employee benefit plans (and also tax exempt organizations) as to whether the Internal Revenue Service with its primary concern with the collection of revenues is giving sufficient consideration to the purposes for which these organizations are exempt. Many believe that the present organization of the Service causes it to subordinate concern for the protection of the interests of plan participants (or the educational, charitable, etc., purposes for which the exemptions are provided).

On the other hand, the enormous growth in retirement plans during the last third of a century has proceeded largely under the tax regulations of the Internal Revenue Service. Moreover, clearly the greatest single protection for rank and file employees during this time has been the Internal Revenue Service's administration of the provision denying any special tax treatment for contributions or benefits discriminating in favor of employees who are officers, shareholders, supervisors, or highly compensated employees. The thrust of this provision is to re-

[1] Reorganization Plan No. 1 of 1952 which went into effect on March 15, 1952. For a description of the present organization of the Internal Revenue Service, see Statement of Organization and Functions (C.B. 1970–1, 442).

quire broader substantial participation in the plans than would be provided but for the Service's administration of the statute.

At the same time, it must be recognized that the natural tendency is for the Service to emphasize those areas that produce revenue rather than those areas primarily concerned with maintaining the integrity and carrying out the purposes of exemption provisions. Similar concern has been expressed in the past over the Service's administration of the provisions of the tax law relating to exempt organizations.

Your committee believes that in the employee benefit plan and tax exempt organization area it should be easier to emphasize the basic objectives involved if the activities relating to these plans and exempt organizations were more closely coordinated, if the activities in these areas relating to auditing, rulings, etc. whether in the field or in the national office are brought together and if the top direction for these activities also has specialized in them. For the reasons outlined, the bill establishes a separate office in the Internal Revenue Service, headed by an Assistant Commissioner for Employee Plans and Exempt Organizations to deal primarily with plans that are (or claim to be) qualified under section 401 of the code and organizations that are (or claim to be) exempt from income taxes under section 501(a) of the Code. This includes pension, profit-sharing and stock bonus trusts and plans, religious, educational, and charitable organizations and foundations as well as the various other exempt organizations described in section 501(c) of the code. Similar functional units are to be established in the various regional and/or district offices. The committee has decided to authorize funds of $70 million a year to fund this new unit in the Internal Revenue Service.

Explanation of provisions

Office of Assistant Commissioner, Employee Plans and Exempt Organizations.—The bill establishes within the Internal Revenue Service a new office of Assistant Commissioner to be known as the Office of Assistant Commissioner, Employee Plans and Exempt Organizations. This office is to have the supervision and direction of the basic activities of the Internal Revenue Service in connection with pension, etc. plans (governed by secs. 401 through 415 of the code) and tax exempt organizations (exempt from tax under sec. 501(a) of the code). The bill authorizes the prescribing of the activities this office is to be responsible for in connection with organizations exempt from tax (under sec. 501(a) of the code) and plans which receive the special tax benefits of the qualified deferred compensation provisions of the tax laws (secs. 401 through 415 of the code).

In connection with deferred compensation plans it is intended that this office will be made responsible for, among other things, the question as to the qualification of the plan and the related trust and the exemption from tax of the trust. It also is intended that question as to the deductibility of contributions to a plan, the taxability of a beneficiary of an employees' trust and the taxation of employee annuities be included in the jurisdiction of this office. In addition, it is planned that this office would have responsibility over the minimum standards relating to funding of the plan and the excise tax for underfunding, including the enrollment and reports of actuaries.

In connection with organizations exempt from tax (under sec. 501(a) of the code) it is intended that this office have the responsibilities as to an organization's exempt qualification, the taxes on unrelated business income of an organization exempt from tax, and the rules relating to the private foundation provisions of the Internal Revenue Code.

To carry out the provisions of this bill, it is intended that the principal activities referred to above will be transferred from the various Assistant Commissioners' offices to the new Office of the Assistant Commissioner (Employees Plans and Exempt Organizations). With these transfers it is intended that the Assistant Commissioner (Employee Plans and Exempt Organizations), under the direction and supervision of the Secretary, or his delegate, will have the authority to direct national and field office policy in connection with the basic activities of the Service relating to employee plans and exempt organizations.

Authorization of appropriations.—The responsibilities and functions allocated to this new office are to be funded by separate appropriations, authorization for which is made in this bill. Presently the costs of administering the provisions of the tax law relating to exempt organizations are about $20 million and the cost of administering the provisions relating to employee plans is about $22 million. This suggests a total of $42 million, but with the new activities provided in the case of pension plans and the expanded requirements under the 1969 Act with respect to exempt organizations, it is anticipated that significantly more revenue than this will be required to carry out these functions in the future. Accordingly, the bill authorizes $20 million for the remaining portion of the fiscal year ending June 30, 1974, and $70 million for succeeding fiscal years.

Effective date

These provisions are to be effective 90 days after the date of enactment of the bill.

Revenue effect

It is believed that this provision will not have any revenue effect.

2. TAX COURT DETERMINATIONS

Present law

Plans which meet the requirements of the Internal Revenue Code (that is, are exclusively for the benefit of employees, are nondiscriminatory in regard to coverage and benefits, do not engage in prohibited self-dealing transactions and meet certain other qualifications) receive special tax treatment designed to foster their growth. It is not necessary, in order to receive this special tax treatment, that a prior determination be obtained from the Internal Revenue Service as to the qualification of a plan. However, to assist employers in their development of plans or plan amendments, the Internal Revenue Service issues determination letters indicating whether or not proposed plans or amendments qualify for the special tax treatment. As a practical matter, since taxpayers generally want assurance in advance that their plans or amendments will qualify, in most cases they obtain prior determinations from the Internal Revenue Service when adopting a

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plan or modification. Such a determination relates to the qualification of the plan (sec. 401 of the code) and the tax-exempt status of the related trust (sec. 501 of the code).

Under the Internal Revenue Service's published procedures, this generally takes the form of a determination letter issued by a district director. The district director may request technical advice from the national office on issues arising from a request for a determination letter. Also, the applicant may request national office consideration of the matter if the district director does not act within 30 days from notice of intent to make such a request, or acts adversely.

Standards are set as to the type of situation in which the national office will entertain a request for consideration of a case. It will, for example, consider a case where the contemplated district office action is in conflict with a determination made in a similar case in the same, or another district. The procedure provides for a conference in the national office, if it is requested by the applicant.

General reasons for change

In most cases an employer is ultimately able to obtain national office consideration of a request for a determination by means of a request for technical advice by a district director or by appeal to the national office of a district director's determination or failure to make a determination. In some cases, the Service has refused to make a determination with respect to the status of a plan and related trust. In either case, however, the employer has exhausted his remedies after the action by the national office.

As a practical matter, there is no effective appeal from a Service determination (or refusal to make a determination) that a proposed pension plan fails to qualify for the special tax benefits. In these cases, although there may be a real controversy between the employer and the Service, present law permits the employer to go to court only after he has made contributions to the plan, deducted them, and had those deductions disallowed. The long time period and the related uncertainty, coupled with the threat of the ultimate loss of the tax deduction, almost always causes the employer to go along with the Service, even if he disagrees with the Service's position. In addition the determination letter procedure does not permit employees, or their unions, to question the qualification of plans.

Your committee believes that both employers and employees should have a right to court adjudication in the situations described above. The bill deals with the problem by providing that, in the event of an unfavorable determination (or failure to make a determination), the employer may ask the Tax Court for a declaratory judgment as to the status of a new plan, a plan amendment or a plan to be terminated. In addition, your committee has decided that interested employees should be allowed to participate in the consideration by the Service of an employer's request for a determination and any controversy connected with it. An employee who intervenes in the Service's determination procedure is to be entitled to receive a copy of the determination issued by the Service in connection with the proceeding. If the employee questions a Service determination with respect to the qualification of a particular plan, he may petition the Tax Court to issue a declaratory judgment as to the status of the plan.

Your committee believes that this procedure is desirable because it will permit all interested parties to the controversy (the Government, the plan administrator, the employer, and his employees) to have an opportunity to participate in the administrative determination of the matter and to have an opportunity to contest the Service determination of the matter.[2]

While the committee decision permits employers and their employees to petition the Tax Court for a declaratory judgment in connection with a new plan, a plan amendment, or a plan termination, the committee also expects the Service to establish procedures whereby interested parties (including employees regardless of whether they are plan participants or plan beneficiaries) may question the continued qualification of a plan and a related trust and obtain a determination from the Service. In such a case, it is believed that the Service should afford the employer and other interested parties an opportunity to be heard before issuing a determination letter with respect to the plan and related trust. If the Service ultimately concludes that a plan is no longer qualified, then the Service is to proceed in the usual manner by notice of deficiency.

While this new declaratory judgment procedure is being made available to parties who desire to use it, there is no requirement that a party use this new procedure to determine the status of a plan. Further, there is no requirement, as a condition for qualification, that a request for a determination be made.

Explanation of provisions

In general.—The bill provides that the United States Tax Court is to have jurisdiction in the case of an actual controversy involving a determination by the Internal Revenue Service with respect to the initial qualification or continuing qualification of a retirement plan. This applies to pension, profit-sharing, and stock bonus plans (described in sec. 401(a)), annuity plans (described in sec. 403(a)), and bond purchase plans (described in sec. 405(a)).[3]

In order to satisfy the Tax Court that an actual controversy exists, an employer will have to place the plan into effect prior to the time that he petitions the Tax Court for a declaratory judgment. However, a new plan is to be treated as in effect even if it includes a provision that the funds contributed to it by the employer and employee may be refunded in the event that the plan is found not to be a qualified plan. If the contributions are refunded, all deductions for contributions would be disallowed and all income derived by the trust would be includable in income by the person who receives the payment. In the case of a plan amendment or plan termination, the action by the employer or plan trustee also may be put into effect on a conditional basis. Since the special tax benefits provided by the tax law are provided as

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[2] The present Service procedure provides that appeals from a district director are to be considered by the national office in Washington, D.C., and as a result, if a party wishes to make an oral presentation, he must incur the cost of travel. The Service has instituted a regional appeals procedure in connection with the status of an organization exempt by reason of section 501(c)(3) and it is hoped that the Service will be able to institute a similar appeals procedure for employee benefit plan determinations.

[3] In providing the Tax Court declaratory judgment provisions of this bill with regard to employee plans, your committee does not intend that any inference be drawn as to the state of existing law with regard to the availability of declaratory judgment procedures or similar procedures in cases now before the courts.

an incentive to employers to adopt plans which provide for broad coverage of employees and protection of participants and beneficiaries, these individuals are to be treated as interested parties (under regulations prescribed by the Secretary or his delegate), and thus may petition the Tax Court to declare that the plan as constituted does not satisfy the requirements of the tax law designed to protect the employees and their beneficiaries as intended by Congress. For example, a participant under a plan would be entitled to bring an action if he alleges that the vesting provisions under the plan do not satisfy the minimum vesting requirements of the tax law (sec. 411), and thus the plan is not entitled to the tax benefits provided for qualified plans unless the plan is amended to satisfy the minimum vesting requirements. Similarly, such an action might be brought with regard to the antidiscrimination, the participation and coverage, or other requirements of current law or as added by this bill.

The Tax Court is to have jurisdiction to make a declaration with respect to the initial or continuing qualification of such an employee retirement plan only with respect to a new plan, a plan amendment, or a plan termination. Any such declaration is to have theforce and effect of a final judgment or decree and is to be reviewable as such. The court is to base its determination upon the reasons provided by the Internal Revenue Service in its notice to the party making the request for a determination, or based upon any new matter which the Service may wish to introduce at the time of the trial. The Tax Court judgment, however, is to be based upon a redetermination of the Internal Revenue Service determination and not on a general examination of the provisions of the plan or related trust. The burden of proof rules are to be developed by the Tax Court under its rule-making powers.

The judgment of the Tax Court in a declaratory judgment proceeding is to be binding upon the parties to the case based upon the facts as presented to the court in the case for the year or years involved. This, of course, does not foreclose future action (within the limits of the legal doctrines of estoppel and stare decisis) if an examination of the operations of a plan indicates that the plan does not in operation meet the requirements for qualification.

Procedure.—It is anticipated that the normal rules of the Federal courts as they relate to declaratory judgments are to be applicable under the Tax Court declaratory judgment procedure. For this purpose, however, the filing of any pleading by a petitioner may be held to be premature, unless the petitioner establishes to the satisfaction of the Tax Court that he has complied with the requirements prescribed under regulations by the Secretary of the Treaury providing for notice to interested parties that a Tax Court declaratory judgment proceeding is being initiated. It is anticipated that the Treasury regulations will provide that a party requesting a determination letter with respect to the qualification or continuing qualification of an employee retirement plan must give notice to parties in interest at the time of the request for the determination in order to apply to the Tax Court for a declaratory judgment with respect to such a request for a determination.

Exhaustion of administrative remedies required.—For a petitioner to receive a declaratory judgment from the Tax Court under this

provision, he must demonstrate to the court that he has exhausted all administrative remedies which are available to him within the Internal Revenue Service. Thus, in the case of an employer, or a plan administrators he must demonstrate that he has made a request to the Internal Revenue Service for a determination and that the Internal Revenue Service has either failed to act, or has acted adversely to him, and that he has appealed any adverse determination by a district office to the national office of the Internal Revenue Service, or has requested or obtained through the district director technical advice of the national office. To exhaust his administrative remedies a party must satisfy all procedural requirements of the Service. For example, the Service may decline to make a determination if an employer fails to supply the Service with the necessary information on which to make a determination. In addition, the Service should decline to make a determination if it is not satisfied that the employer has taken reasonable steps to notify all employees who might have an interest in the action on request for a determination.

A petitioner is not to be deemed to have exhausted his administrative remedies in cases where there is a failure by the Internal Revenue Service to make a determination before the expiration of 270 days after the request for such a determination to be made. Once this 270-day period has elapsed, a petitioner who has exhausted his remedies may bring an action even though there has been no notice of determination from the Internal Revenue Service.

No petition to the Tax Court may be filed after 90 days from the date on which the Secretary or his delegate sends notice to a person of his determination (including refusals to make determinations) as to the qualification of the plan. This notice is to be sent to the person requesting the determination and to any other person who has participated under the Internal Revenue Service regulations in the administrative determination of the qualifications of the plan.

While the Service presently does not provide any procedure for employee objection to proposed determinations concerning the qualification of a plan, it is anticipated that the Service will adopt procedures similar to those procedures provided for employers making the request for the determination. These procedures would permit employees who have an interest in the requirements necessary for the plan to qualify to participate in the administrative determination of whether a plan is entitled to qualified status. An employee must exhaust these remedies before petitioning the Tax Court for a declaratory judgment. If there has been a failure to provide an employee with adequate notice of a request for a determination, then he need only exhaust those administrative remedies that are available to him at the time he receives adequate notice.

Tax Court Commissioners.—In order to provide the Court with flexibility in carrying out this provision, the bill authorizes the Chief Judge of the Tax Court to assign the Commissioners of the Tax Court to hear and make determinations with respect to petitions for a declaratory judgment, subject to such conditions and review as the Court may provide.

Effective date

The amendments providing for petitioning of the Tax Court to issue declaratory judgments are to take effect on January 1, 1978.

Revenue effect

It is not believed that this provision will have any revenue effect.

E. Limitations on Contributions and Benefits

(Secs. 2001 and 2003 of the bill and secs. 72, 401, 404, 415, 1379, and 4972 of the Code)

Present law

Under present law generally, if an employer maintains a funded plan which does not meet the requirements for qualifications under the Internal Revenue Code, no deduction is allowed for contributions to the plan by the employer until the rights of the employees on whose behalf the contributions are made are no longer subject to a substantial risk of forfeiture (and then only if separate accounts are maintained for the employees) or are actually paid. At that time, a deduction generally is allowed the employer, but the employee then must take the contributions into his income. Also the earnings on these contributions are not tax exempt. In comparison with the nonqualified plan, under the qualified plan the employer may receive a deduction for contributions to the plan, the earnings on the contributions are tax exempt, and the employees generally do not have to take the contributions into income until benefits are actually distributed to them.

Under present law, different rules are provided for employer and employee contributions in the case of qualified plans for self-employed individuals (H.R. 10 plans), plans of "regular" corporations, and plans of electing small business corporations (subchapter S).[1] These are described below.

H.R. 10 plans.—The amount of annual deductible contributions to an H.R. 10 plan on behalf of a self-employed person cannot exceed the lesser of 10 percent of his earned income [2] or $2,500 (sec. 404(e)). In addition, nondeductible contributions may be made in certain cases, but these contributions on behalf of owner-employees may not exceed the lesser of 10 percent of earned income or $2,500. Allowable voluntary contributions of employees of owner-employees must be at least proportionate to allowable voluntary contributions for owner-employees (sec. 401(e)(1)(B)(ii)).

"Regular" corporate plans.—In the case of a "regular" corporate plan (except as discussed in footnote 1) there are no limitations on the benefits an employee can derive from a qualified plan. There are, however, limitations on the amount of the contribution that is deductible. Different limitations apply to profit-sharing and stock bonus plans and

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[1] All the types of plans must, in addition to the rules described below, meet the general reasonable compensation tests (sec. 162). The statute does not specify limitations on the benefits which may be paid under a qualified pension plan. However, in Rev. Rul. 72–3, 1972–1 CB, 105 the Internal Revenue Service ruled that pension benefits from a qualified pension plan are intended as a substitute for compensation, and that in general a plan which provides benefits in excess of an employee's compensation is therefore not qualified.

[2] "Earned income" is generally defined as being equivalent to "net earnings from self-employment"—the kind of income that may be subject to self-employment taxes in lieu of FICA taxes (sec. 401(c)(2)).

to pension plans. All those limitations are based on the aggregate covered payroll rather than being on an employee-by-employee basis.

In the case of profit-sharing or stock bonus plans, the amount of the contribution that is allowable as a deduction is not to exceed in the aggregate 15 percent of compensation to employees covered under the plan. Contributions in excess of the 15-percent limitation may be carried over to future years. In addition, within certain limits, to the extent that an employer does not make the full 15-percent contribution in one year he may increase the amount of his deductible contribution in a future year.

In the case of pension plans, the amount of the contribution that is deductible is not to exceed 5 percent of the compensation to employees covered under the plan, plus the amount of the contribution in excess of 5 percent of compensation to the extent necessary to fund normal pension costs and remaining past service costs of all employees under the plan as a level amount or as a level percent of compensation over the average remaining future service of plan participants. In the alternative, the taxpayer may compute the limit on his deductible contributions by limiting his deduction to his normal cost for the plan plus 10 percent of the past service cost of the plan (sec. 404(a)). In practice, these limitations have very little effect in limiting the size of contributions to regular corporate pension plans.

Where an employer contributes to two or more retirement plans which are governed by different limits on deductions (pension or employee's annuities on the one hand, and profit-sharing or stock bonus, on the other hand), the total amount annually deductible under the plans cannot be more than 25 percent of compensation otherwise earned by the plan beneficiaries. If any excess is contributed, it may be deducted in the following year; the maximum deduction in the following year (for carryover and current contributions together) is 30 percent of compensation. A carryover is available for additional excess contributions which are deductible in the succeeding taxable years in order of time.

Subchapter S plans.—The limitations on the deductibility of contributions to a subchapter S corporation plan are the same as those in "regular" corporate plans. However, a shareholder-employee (an employee who owns more than 5 percent of the outstanding stock of the corporation) must include in his gross income the amount by which the deductible contributions paid on his behalf exceed the lesser of 10 percent of his compensation or $2,500 (sec. 1379(b)).

Professional corporations.—Generally, lawyers, doctors, accountants and certain other professional groups in the past have been unable to carry on their professions through the form of corporations because of the personal nature of their responsibility or liability for the work performed for a client or patient. Consequently, their contributions to retirement plans were limited by the rules governing self-employed persons. In recent years, however, all States have adopted special incorporation laws which provide for what are generally known as "professional corporations." These have been used increasingly by groups of professional persons, primarily to obtain the more favorable tax treatment for pensions generally available to corporate employees. The Treasury Department, in the so-called Kintner regulations, held

that professional corporations were not taxable as corporations. A number of court cases, however, have overturned the regulations and the Service has now acquiesced and generally recognizes these professional corporations as corporations for income tax purposes.

General reasons for change

Many self-employed people, especially professionals, feel that they are discriminated against as compared with corporate executives and proprietary employees of corporations in regard to the tax treatment of retirement savings. This is because, at present, there is no comprehensive limit on the amounts the corporate employer can provide under a qualified plan on behalf of its executives and proprietary employees. Self-employed persons, on the other hand, are subject to the contribution limits described above.

In addition, many of the self-employed argue that, as a result of these contribution limits, it is difficult for them to provide adequately for their retirement, particularly as many professionals have a limited number of years of peak earnings, in which it is comparatively easy to set something aside. It is also argued that the $2,500 limit is no longer appropriate, since in the approximately 10 years since H.R. 10 was first enacted, there has been a substantial inflation factor in the economy. Furthermore, it is contended that the present law in the retirement plan area creates an artificial incentive for the incorporation of businesses which more traditionally, and perhaps more appropriately, have been conducted in unincorporated form. For all of these reasons, the committee believes that a substantial increase in deductible contributions for self-employed individuals is justified at the present time. Under the bill, the present limits would generally be increased to 15 percent of earned income, up to a maximum deduction of $7,500 per annum.

At the same time that some individuals have been questioning the relatively low level of tax deductible contributions for H.R. 10 plans, others have questioned the wisdom of permitting virtually unlimited pension benefits in corporate plans to be funded out of tax-free dollars.

Your committee recognizes the importance of tax incentives in creating a strong private pension system. At the same time, however, your committee believes it is appropriate to provide some limitations to prevent the accumulation of corporate pensions out of tax-sheltered dollars which are swollen completely out of proportion to the reasonable needs of individuals for a dignified level of retirement income. Moreover, by imposing limitations on corporate plans, and liberalizing the limitations which are imposed under present law on H.R. 10 plans, the bill takes a long step forward to achieving tax equity in this area. Thus, the bill provides, in general, that a qualified trust may not provide a defined benefit in excess of $75,000 a year, or 100 percent of the employee's average high-3 years of compensation (whichever is less) and that contributions to a qualified money purchase pension plan, profit-sharing plan or stock-bonus plan may not exceed $25,000 a year, or 25 percent of the employee's annual compensation (whichever is less). These provisions do not limit the size of the pension which the employee may receive from a non qualified plan, which

is financed out of taxed dollars. The only effect of the provisions is to limit the size of the pension which is subsidized by the tax laws.

Explanation of provisions

1. *H.R. 10 plans—in general.*—The bill increases the maximum deductible contribution on behalf of self-employed persons to the lesser of $7,500, or 15 percent of earned income. (A similar, although not identical, rule is applied in the case of defined benefit pension plans.) However, no more than the first $100,000 of earned income may be taken into account in applying the percentage limits. The $100,000 ceiling on the earned income rate base means that a self-employed person (or a shareholder employee in a subchapter S corporation) with more than $100,000 income will have to contribute at a rate of at least 7½ percent on behalf of his employees if he wishes to take the full $7,500 deduction on his own behalf (in order to comply with the antidiscrimination requirements).[3] A self-employed person earning more than $100,000 who wishes to contribute $5,000 for himself will have to contribute at least 5 percent on behalf of his employees.

For purposes of these rules a self-employed person is allowed only one $100,000 contribution base, no matter how many plans he may establish for a trade or business. For example, a self-employed person with $200,000 of earned income could not cover himself under two plans, each of which also covered half of his employees, and use up his $7,500 limit by contributing at a rate of 3.75 percent under both plans; in other words, contributions for all employees would have to be at a 7.5 percent rate, if the self-employed individual was to be allowed to make a $7,500 deductible contribution on his own behalf.

The committee bill also contains a provision to permit self-employed individuals to set aside up to $750 a year out of earned income as a deductible contribution, even though it exceeds the otherwise applicable percentage limitation (15 percent of earned income). This provision will enable certain organizations of the self-employed, such as the Jockeys' Guild, to set up retirement plans for their members without having to confront complex record-keeping and administrative problems, and will also allow any self-employed individual who wishes to do so to save for his retirement, even though his earned income in a particular year is relatively low.

Subchapter S corporations.—Since Subchapter S corporations are not subject to normal corporate tax, and the stockholders of the corporation are taxed generally like self-employed partners. Your committee believes it is appropriate to retain section 1379 in the Code. However, the bill raises the limitations on contributions for Subchapter S stockholders to the same substantially increased deductible amounts (15 percent of earned income, or $7,500) which are allowed under the bill for self-employed individuals.

Defined benefit plans for the self-employed.—Under present law, most self-employed plans are defined contribution plans because of the limitations on contributions imposed on self-employed persons un-

[3] The limitations on nondeductible contributions on behalf of owner-employees in a self-employed plan are not increased, however.

der present law. Your committee believes that the option of having defined benefit plans should be available to the self-employed and shareholder-employees of Subchapter S corporations. Accordingly, the bill provides that the Secretary or his delegate is to prescribe regulations which will allow self-employed plans (or plans benefiting shareholder-employees of a Subchapter S corporation), in effect, to translate the 15 percent-$7,500 limitation on contributions, to which they would otherwise be subject, into limitations on benefits which they could receive under a defined benefit plan. The bill also provides certain "guideline regulations" which the Secretary must follow in carrying out the purposes of the bill.

A defined benefit plan which follows the guideline regulations is to be subject to the limits on deductions for corporate defined benefit plans rather than the 15 percent-$7,500 limitation.

Under the formula provided in the bill, the basic benefit for the employee (that is, a straight life annuity commencing at the later of age 65 or 5 years from the time the participant's current period of participation began, with no ancillary benefits and assuming no employee contributions) is not to exceed the amount of the employee's compensation [4] which is covered under the plan (up to a maximum of $50,000) times the percentage shown on the following table.

Age at participation	*Percentage*
30 or less	6.5
35	5.4
40	4.4
45	3.6
50	3.0
55	2.5
60 or over	2.0

The percentages in early years are higher to reflect the fact that contributions made during these time periods earn interest for a longer period prior to retirement than contributions made in later years. Thus, for purposes of applying the table, past service credits are not to be considered in determining at what age a self-employed individual's period of participation in the plan began. The Secretary or his delegate is to have authority to prescribe regulations in cases of plans which provide something other than the "basic benefit." Also, the regulations are to specify percentages for individuals who become participants at ages between those shown on the table. In addition, the Secretary or his delegate is given authority to prescribe new percentages, to be used in years beginning after December 31, 1977, based on changes in money rates and mortality tables occurring after 1973.

To illustrate how this formula would work, assume that a self-employed person enters a defined benefit plan at age 30, and participates in the plan for 5 years, with income covered under the plan of $20,000 per annum. At age 35, he leaves the plan, but at age 50, he again becomes a participant. For the first 5 years his covered income

[4] In the case of a self-employed individual the term "compensation" means earned income; in the case of a shareholder-employee the term means the amounts received as compensation from the Subchapter S corporation.

is $30,000 per year, then $40,000 for the next 5 years, and finally $50,000 for the last five years prior to his retirement.

The calculation would work as follows:

Age	Compensation per year	Rate	Benefit earned per year	Total benefit
30–35	$20,000	6.5	$1,300	$6,500
50–55	30,000	3.0	900	4,500
55–60	40,000	3.0	1,200	6,000
0–65	50,000	3.0	1,500	7,500
Total				24,500

Thus, the maximum benefit which could be paid to the individual under the plan in the form of a single life annuity commencing at age 65 with no ancillary benefits would be $24,500 per year.

In order to receive the maximum benefit accrual rate under the formula in a later period, a self-employed individual might establish a plan for himself at an early age, but with a very low rate of accrual, or a very low compensation base on which the benefit accrual was measured. Thus, his employees during this period would only receive a low-benefit accrual. Later, when some of these employees had departed, the self-employed individual might seek to raise the rate of accrual. To prevent this sort of abuse situation, the bill requires that the regulations must provide that any increase in the rate of accrual or the compensation base [5] under the plan, would be treated, only with respect to such increase, as beginning a new period of participation for the self-employed individual. For example, assume that a plan was established by an individual at age 30, which provided for a 6.5 percent rate of accrual, but that the compensation base under the plan was only $10,000. Then, at age 40, the individual wishes to increase the annual benefit accrual to the maximum permissible amount. This would be computed by taking 6.5 percent of the first $10,000 of compensation, and 4.4 percent (the maximum rate of accrual for a self-employed individual who enters a plan at age 40) of additional compensation up to the $50,000 ceiling, for a total accrual of $2,410 per year for an individual having at least $50,000 of compensation.

The committee bill also provides that for purposes of the antidiscrimination rules, the maximum amount of compensation which is to be taken into account is to be $100,000. (This is the same ceiling provided in connection with contributions to a money purchase plan.) For example, if a self-employed person established a defined benefit plan for himself at age 50 (where a 3 percent rate would apply) and earned $100,000 per year, benefits under the plan for his employees could be earned at the rate of 1.5 percent of covered compensation, and the plan would not be considered to be discriminatory. In other words, the maximum benefit which could accrue per year for the self-employed person would be 3 percent of $50,000, or $1,500, which is equivalent to 1.5 percent on a $100,000 base. Thus, the self-employed person would be permitted to make contributions which would pur-

[5] Of course, an increase in the amount of compensation earned by the self-employed individual would not trigger a new period of participation.

chase a 1.5 percent benefit for his employees. However, even if the self-employed person's earnings were $200,000, benefits earned for the employees under the plan could not drop below the 1.5 percent rate.

A plan which covers owner-employees may not take advantage of the regulations authorized in this provision, unless it provides benefits for all participants under the plan on a nonintegrated basis.

In order to assure reasonable comparability between defined benefit and defined contributions and combination of plans, the regulations are to provide for appropriate adjustments in the allowable amount of deductible contributions, or permissible rate of benefit accruals in cases where the same self-employed individual is a participant in two or more plans. For example, a $3,750 contribution to a money purchase pension plan (for an employee whose earnings is at least $50,000) has the effect of reducing the maximum allowable rate of accrual under a defined benefit plan by one-half. In addition, a change in the rate of accrual by reason of this rule is to be treated as a new period of participation for purposes of determining the maximum rate of accrual under the table provided for defined benefit plans.

For purposes of the above rules, all plans of a controlled group of partnerships (within the meaning of secs. 414(c) and 415(h) of the code) are to be aggregated for purposes of the limitations.

Excess contributions.—Under present law, if excess contributions are made on behalf of an owner-employee, these must be repaid with the earnings thereon within 6 months after the mailing of notice by the Internal Revenue Service; otherwise the plan will become disqualified with respect to that individual. In the case of an excess contribution which is willfully made, the plan will become disqualified with respect to the owner-employee, and he is barred from participating in a qualified plan for the 5 succeeding years. In contrast a shareholder-employee who is subject to the same deduction limits need not repay the excess contributions but must take those amounts into income.

This rule can work a hardship in cases where a relatively minor violation of the excess contribution rules could result in a complete disqualification of the plan with respect to an owner-employee. Moreover, the present rules will not work well in the context of a defined benefit plan, because it is difficult, if not impossible, to trace particular contributions to benefit accruals under the plan for particular employees. For these reasons, the bill repeals the provisions of present law outlined above.

At the same time, it is clear that there must be some rule to discourage excess contributions in order to prevent the tax-free accumulation of earnings on contributions in excess of those permitted under the law. Since the major abuse of overfunding is that it permits the tax-free accumulation of the earnings on the excess contribution, your committee's bill imposes an excise tax of 6 percent on excess contributions to plans for the self-employed. The tax is to be paid by the employer who maintains the plan.

In the case of a defined contribution plan (for example, a money purchase pension plan), excess contributions include amounts contributed by the employer in excess of the 15 percent of earned income, or $7,500 deduction limits on contributions on behalf of self-employed persons. In the case of a defined benefit plan, the tax is imposed where

the plan is fully funded at the close of the employer's taxable year, and is imposed upon the amount that has not been deductible for the taxable year or any prior taxable year (i.e., the amount of the carry-overs). Also, in either type of plan, excess contributions include voluntary contributions by owner-employees in excess of the allowable amount of such contributions. As under present law, voluntary contributions on behalf of owner-employees may not exceed the lesser of 10 percent of earned income, or $2,500. Moreover, allowable voluntary contributions under the plan for employees other than owner-employees must be at least proportionate to allowable voluntary contributions for owner-employees. As under present law, excess contributions do not include amounts which are allocable under regulations to the purchase of life, health or accident insurance.

In the case of a plan funded through level premium insurance payments, the employer may contribute an amount based on an average of the allowable deductible contributions for an owner-employee for the three immediately preceding taxable years without triggering the tax on excess contributions, even though this amount is in excess of the deductible contribution which can be made for that employee for the taxable year in question. However, any such amounts will be treated as part of the owner-employee's distributable share of the partnership income for income tax purposes and as a voluntary contribution by the owner-employee for purposes of the excise tax on overfunding.

To encourage plans to repay the amount of any excess contributions (and in recognition of the cumulative advantages of excess contributions), the committee bill provides that the excise tax is to be cumulative. For example, assume that an employer made a contribution of $15,000 on behalf of an owner-employee in a year in which only a $5,000 contribution was allowable as a deduction. An excise tax of $600 would be imposed for that year.[6] If, in the following year no amounts were contributed to or repaid from the plan, but an additional deductible contribution of $5,000 were allowable for that year, an excise tax of $300 would be imposed ($10,000 minus the $5,000 deductible contribution allowable for year two, equals $5,000, times 6 percent, equals $300).

Regulations will provide for the situation where there are two or more plans benefiting the same self-employed individual, or where there are two or more partnerships or proprietorships under common control.

Premature distributions.—Under present law, in general, where amounts are distributed under a qualified plan to an owner-employee before he attains age 59½, section 72 provides that the tax imposed on such amounts shall be not less than 110 percent of the amount of the increase in his taxes due to the distribution. Where the premature distribution exceeds $2,500, then, for purposes of computing the penalty, it is averaged over the current year and the four preceding years.

The purpose of the provisions allowing a deduction for contributions to a qualified retirement plan is to allow money to be set aside on a

[6] In a plan which permits voluntary contributions by owner-employees, the plan might treat part of excess employer contributions as a voluntary contribution, as under present law, thus reducing the tax on overfunding. However, under these circumstances, owner-employees would have to take the amount of the voluntary contribution into income.

tax-sheltered basis for retirement purposes. Where the retirement plan contributions are withdrawn prior to the retirement years, this purpose is frustrated. The committee therefore believes that there should be a substantial deterrent to prevent an owner-employee from treating his retirement plan as a tax-free savings account which he can withdraw prior to retirement.

The provisions of present law do not fully serve this purpose. The amount of the penalty varies depending on the taxpayer's marginal rate of tax on his other income during the year in which he receives the premature distribution. Also, present law affords an opportunity for the owner-employee to minimize the penalty by arranging to receive the premature distribution in a year in which his other income is low, or his deductions are high.

To remedy this situation, the bill repeals the penalty provisions of present law and imposes instead an income tax of 10 percent on the amount of the premature distributions. This is in addition to any other income taxes payable on this distribution, and would not be offset by any tax credits (other than the refundable credits for overwithholding, overpayment of tax, and the gasoline tax credit). Also, this tax would not be treated as reducing the individual's tax liability under the minimum tax provisions.

As under present law, the penalty tax would not apply in the case of a distribution due to death or disability.

Withdrawing of voluntary contributions by owner-employees.—Under present law, amounts received from a retirement plan before retirement are tax free to all participants other than owner-employees to the extent of all nondeductible contributions made to the plan by the participants. Thus, all participants other than owner-employees may, if the plan permits it, withdraw their voluntary contributions prior to retirement. The bill extends this same treatment to owner-employees.

Time for making contributions.—Under present law, contributions to a self-employed plan must be made by the end of the taxable year in order to be deductible for that year. Often this can create difficulties for the self-employed person, who may not have at hand all the information necessary for him to determine how much he is permitted to contribute on his own behalf. In order to meet this problem, the bill provides that tax deductible contributions of self-employed plans (and all other qualified plans) may be made at any time up to the point when the Federal income tax return (corporate or individual, as the case may be) for that year is due (including any extension). This rule should provide the additional time necessary for the individuals involved to make the required calculations and determine the amount of the maximum deductible contribution which is permitted for the taxable year in question.

2. *Overall limitation—in general.*—As part of the process of moving toward parity in the tax treatment of corporate plans and H.R. 10 plans, the committee bill contains provisions imposing overall limitations on the contributions and benefits which are allowable under qualified plans and retirement accounts and annuities which receive

favorable tax treatment.[7] This overall limitation must be satisfied in order for the favorable tax benefits under the plan, annuity, or account to be retained. H.R. 10 plans and plans of Subchapter S corporations are also subject to these rules.

Plans to which limitation applies.—The overall limitation applies to a trust which is part of a pension, profit-sharing, or stock bonus plan (described in sec. 401(a)), an annuity contract (described in sec. 403(b)), an employee annuity (described in sec. 404(a)(2)), and an individual retirement account or annuity (described in sec. 408).

Defined benefit plans—limitation on benefits.—Under the committee bill, in general, the highest annual benefit which can be paid out of a defined benefit plan to a participant is equal to the lesser of (1) $75,000, or (2) 100 percent of the participant's average compensation from the employer during his highest 3 consecutive calendar years of aggregate earnings during the period he was an active participant in the plan [8] (or his average compensation during the period of his participation in the plan if this was less than 3 years) Compensation for this purpose includes the participant's earnings from his employment and includes bonuses and other taxable payments except for deferred compensations, stock options, and other distributions which receive special tax benefits.

The 100-percent limitation is simply a clarification of present law. The Internal Revenue Service has ruled that a pension is essentially a substitute for earning power during the retirement years (Rev. Rul. 72–3, 1972–1 C.B. 105). Your committee agrees with this interpretation and believes that no qualified pension plan should pay benefits which are higher than an employee's average earnings during his highest 3 years. The committee also believes that it is desirable to impose some dollar limitations on the size of a pension which may be paid out of tax-sheltered dollars and the $75,000 limitation which is imposed under the bill is generous enough to afford a reasonable standard of living.

To prevent the erosion of the value of an employee's pension due to inflation, the committee bill permits a qualified defined benefit plan, in accordance with regulations, to provide a cost-of-living adjustment for employees who have retired or terminated their service under the plan, over and above the 100 percent limitation or the $75,000 limitation. The adjustment to the $75,000 and the 100 percent ceilings will be provided annually by the Secretary or his delegate to reflect cost-of-living increases.

The procedures used in the regulations will be similar to those used in adjusting the old age and survivor's benefits under the social security law (but without regard to the timing or amount of any increase specifically authorized by action of the Congress).

Benefits paid in the event of early retirement would not have to be scaled down from the 100 percent of salary level on an actuarial basis. However, the $75,000 limitation must be scaled down in the event

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[7] Nothing in the committee bill would prevent the payment of any amount of compensation or pension benefits on a nontax-sheltered basis, subject only to the rules of section 162 that in order for the employer to receive a deduction, compensation paid to employees must be reasonable, and the rules of section 404(a)(5) dealing with contributions to nonqualified trusts.

[8] If the individual was an employee of several corporations in a controlled group, his earnings from all members of the group would be aggregated for purposes of these rules.

of early retirement prior to age 55, but not below $10,000. In general, the benefits payable under a defined benefit pension plan would not have to be reduced for pre-retirement ancillary benefits, such as medical, death, and disability. Only post-retirement ancillary benefits which are directly connected with the retirement benefit need be taken into account in computing the limitations. Thus, for example, the value of an annuity paying a sum certain, a post-retirement death benefit or a guaranteed payment for a period of years would be an ancillary benefit which needs to be taken into account.

Your committee believes that it is socially desirable to encourage joint and survivorship benefits. Accordingly, it has concluded that no adjustment should be made for the provision of such a benefit for the participant and his spouse to the extent that the benefit payable to the survivor is not greater than the benefit which would be payable if both the participant and his spouse were alive. To be a joint and survivors annuity, the benefit payable to the survivor must be for the full life of the survivor.

In the case of a contributory plan, upward adjustments in the benefit schedule would be permitted in accordance with regulations, to reflect the fact that part of the annuity had been purchased with the employee's own after-tax dollars.

The committee expects that all of these adjustments will be substantially equivalent to the adjustments now provided under present law for a plan which is integrated with social security.

As a further adjustment, the defined benefit otherwise allowable in accordance with the rules described above is to be reduced by multiplying the otherwise allowable benefit by a fraction, the numerator of which is the employee's years (or part thereof) of service with the employer and the denominator of which is 10. For example, if an individual who had 3 years of service had an average high-three years salary of $50,000 (and no other adjustments were required) his maximum benefit could not exceed 3/10ths of $50,000, or $15,000 per annum. This prevents a situation where an individual might receive an extremely high pension, even though he had only a few years of active service under a plan.

The purpose of providing an overall limitation is to prevent the accumulation of excessive pension benefits out of tax-free dollars. But the committee sees no useful purpose to cutting back on the benefits of the average working man who has a relatively limited amount of income. Accordingly, the bill specifically provides that notwithstanding the 100-percent limitation, or the required adjustments for certain ancillary benefits, a qualified defined benefit plan (or plans) of the employer may pay an annual retirement benefit of up to $10,000 per annum to any employee who has not been a participant in any defined contribution plan of the employer.

Defined contribution plans.—Under present law, there is no limitation on the amount which may be contributed to an employee's retirement account under a corporate defined contribution plan, although the employer may not, in any one year, deduct contributions in excess of 15 percent of the aggregate compensation paid to employees covered under a profit-sharing plan, or 25 percent of the aggregate compensation paid to employees under a combination profit-sharing and

pension plan (except in the case of carryovers, where the present limit is 30 percent).

The committee bill retains these rules (with certain modifications, as discussed below). But the committee believes it is also appropriate to impose limitations on the annual additions which can be made to an individual employee's account under a defined contribution plan in order to achieve some measure of comparability with the limitations imposed under the bill on the benefits which may be paid under a defined benefit plan. For purposes of these rules, defined contribution plans include profit-sharing and stock bonus plans, as well as money purchase pension plans and target benefit plans.

Under the committee bill, the annual additions to an employee's account under a qualified plan or plans of the employer may not exceed the lesser of (1) $25,000, or (2) 25 percent of the individual's compensation from the employer during the year. The term "annual additions" means (1) the employer's contributions under the plan, (2) the lesser of one-half of all the employee's contributions or all the employee contributions in excess of 6-percent of compensation, and (3) any forfeitures which are added to the employee's account during the year.[9] For purposes of these rules, only a portion of the employee contributions is counted because the employee receives only one of the two tax advantages generally associated with contributions to a qualified plan—deferral of the taxes on the earnings on the contributions—but does not receive a tax deduction for the amount of the contribution when it is made. The option of excluding the first 6 percent of employee contributions recognizes the fact that many plans provide for small amounts of employee contributions and it would greatly increase the complexity of the provision if small amounts of contributions for which there were relatively small tax advantages had to be taken into account. The $25,000 limitation will be adjusted annually for the cost of living in accordance with regulations in the same manner as the $75,000 limitation.

As previously indicated, under present law the contributions allowable as a deduction in a combination profit-sharing and pension plan may not exceed 25 percent of the aggregate compensation to employees covered under the plan. However, where excess contributions are made, these may be carried forward and deducted in succeeding years, and the deduction limitation for those years is increased from 25 to 30 percent. The committee bill modifies this result by continuing to allow the carryover, but providing that the ceiling on deductible contributions remains at 25 percent.

In addition, under present law, in the case of a profit-sharing plan alone, the limitation on deductible contributions is 15 percent of the aggregate compensation paid to employees covered under the plan. In cases where the employer fails to utilize his full 15 percent allowance. the unused portion may be carried forward and used in succeeding years, up to 30 percent of aggregate compensation limit for the taxable year. The bill provides that the carryover of unused contribution limits in this case may not result in a situation where the employer

[9] The term "year" will be defined in regulations. Generally, in cases where there is only one plan, the "year" will be the plan year. In cases where there is more than one plan involved, the regulations will set forth the criteria for determining the relevant year.

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could deduct more than 25 percent of aggregate covered employee compensation for the year.

Combination plans.—Where a corporation has 2 or more plans, or 2 or more different types of plans, the limitations, of course, must operate as an overall ceiling on the maximum benefit the employee can obtain under all the plans. Otherwise, it would be possible to escape the limitations by the simple device of establishing as many plans as were needed to provide the benefits desired. Additionally, rules are needed where an employee is employed by two or more related corporations of the same employer, some of whom have separate retirement plans. In such a case the committee bill provides that all the plans are to be subject to the overall ceiling. The overall ceiling would be computed, in general, by aggregating similar plans (defined contribution or defined benefit) and reducing the limitation on one type by the benefits or contributions of the other.

For purposes of these rules, all of the defined benefit plans of an employer (whether or not terminated) are treated as one plan, and all of the defined contribution plans (whether or not terminated) are treated as one plan. If an employer maintains a defined benefit and a defined contribution plan each plan would be subject to the limit; in addition the two plans must be combined in computing the overall limitation.

To achieve this purpose, the bill establishes a formula (to be applied each year by each employee) under which a defined benefit plan fraction for the year is added to a defined contribution plan fraction. If the sum of these fractions exceeds 1.4, then one or more of the plans will be disqualified. Of course, the employer is free to adjust either the benefits accruing under the defined benefit plan or the annual additions to a defined contribution plan for particular employees to prevent this from happening. The committee anticipates that many plans will include "fail safe" provisions, which automatically freeze either the rate of benefit accrual, or the amount of annual additions, to a level necessary to prevent the overall limitation from being exceeded for any employee. A plan is to be permitted to contain such a provision without violating the requirement that a qualified plan must provide for fixed and determinable benefits.

The numerator of the defined benefit plan fraction is the "projected benefit" of the participant under the plan determined as of the close of the year and the denominator is the maximum benefit which would be permitted under the plan under the limitations established in the bill. For purposes of computing the projected benefit, it is assumed that the participant's compensation for all future years will equal his compensation during the year in question. It is assumed that all other relevant factors considered in computing the benefit, such as provisions of the plan, social security benefit levels, and cost-of-living will remain constant as of that year.

The numerator of the defined contribution plan fraction is the total amount of annual additions to the participant's account through the close of the year in question and the denominator of this fraction is the maximum amount of additions which could have been made for that

participant, under the provisions of the committee's bill for the year in question and all prior years of service with that employer.[10]

For example, assume that an employee is employed at age 40 and immediately becomes a participant in a defined benefit plan which accrues a benefit annually equal to 2 percent of his high three years of compensation (adjusted for the cost-of-living). His annual rate of compensation is $150,000. At age 45, he becomes a participant in a defined contribution plan of his employer.

In the case of this employee, his projected benefit under the defined benefit plan, assuming he works until the normal retirement age of 65, would equal 50 percent of his average high three years of compensation or $75,000. Since $75,000 is the maximum amount of the annual benefit which is payable from a qualified plan under the provisions of the committee bill (assuming no increase in the cost-of-living) contributions could be made for the employee under the defined contribution plan, if the defined contribution fraction did not exceed four-tenths.

Assuming that the defined benefit plan were amended to provide that future accruals would equal 1 percent of compensation (or $1,500 per year in the case of this employee), his projected benefit under the defined benefit plan would then equal $45,000, 30 percent of his high three years of compensation (which equals 60 percent of his $75,000 limitation). This would mean that 80 percent of his overall limitation could be provided under the defined contribution plan.

For purposes of these rules, plans of all corporations, partnerships, or proprietorships which are under common control will be aggegated. Generally, the question of common control will be determined under sec. 1563(a) of the Code (and secs. 414(b) and (c) of the Code), except that a 50-percent control test will be applied for purposes of these rules, instead of the 80-percent test imposed under that section. Also to be aggregated are any sec. 403(b) annuity plans or individual retirement accounts (established under the provisions of this bill) in which the individual is a participant. For purposes of these rules, the participant will be treated as having 100 percent control of these plans. For example, a sole proprietor maintaining an H.R. 10 plan for himself who is also a participant in a section 403(b) plan would aggregate the two plans as he has control over both plans.

In the event of a merger between two employers of the same employee, the overall limitation is not less than the aggregate benefits he has already accrued under the plans of both employers if there

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[10] In order to prevent a situation where a plan in existence before the effective date of the provisions might start off under these provisions with a deficit, the committee bill provides that for purpose of the defined contribution plan fraction, additions to the account prior to January 1, 1976, will be treated as not being in excess of the additions which would have been allowable for those years under the provisions of the committee bill.

Since many defined contribution plans permit employees to make "catch-up" contributions to take into account the fact that an employee did not make the maximum contribution for a past year, the computations necessary to compute the defined contribution fraction as of January 1, 1976, may be made on a cumulative basis. In recognition of the fact that plans may have to be amended to satisfy these new limitations and that existing plans often permit 10-percent employee contributions on a cumulative basis, the bill provides that employee contributions are not to be taken into account if made prior to January 1, 1976, if not in excess of the maximum amount of contributions permissible under the plan as in effect on October 2, 1973, to the extent that the contributions are 10 percent (or less) of the employee's salary, computed on a cumulative basis. The maximum amount of contributions permissible under the plan as in effect on October 2, 1973, is intended to include the maximum amount of contributions permissible under amendments to a plan approved by the Internal Revenue Service before October 2, 1973, and actually put into effect before the end of the year 1973.

was no common control before the merger. In other words, the employee will not be forced to give up benefits he has already earned prior to the merger.

If it is determined upon application of the bill formula that the limitations contained in the bill have been exceeded, then the determination as to which plan or plans must be disqualified will be made by the Internal Revenue Service in accordance with regulations. The regulations are to provide that no terminated plan may be disqualified until all other plans have been disqualified (since there might be no recovery of taxes in the case of plans which had terminated in a year for which the statute of limitations had already run). Also, to prevent undue hardship, the regulations are to provide that plans still in existence generally are to be disqualified on a basis which will affect the fewest number of employees.

Additional benefits.—The bill contains a provision which makes it clear that benefits or contributions in addition to those allowable in connection with qualified plans may be paid or accrued on behalf of an employee, so long as this is not done on a tax deferred basis. For example, an employer would be free to provide additional defined benefits under a so-called "pay as you go" plan, which means, in general, that the benefits are paid by the employer as they fall due, and the plan is not funded. Here, the employer would receive his deduction at the time when the employee was required to take the benefits into income.

Similarly, the employer would be free to make defined contributions into a taxable trust or bank account on behalf of the employee and these amounts could be set aside for pension purposes. However, the employer would not be entitled to a deduction (except as provided in sec. 404(a)(5)) until the employee's rights to these amounts are no longer subject to a substantial risk of forfeiture at which time the employee would be required to take them into income.

Special rule where records are not available.—In the case of existing plans, it may be that the employer will not have adequate records to determine the amount of additions which have been made for his employees under a defined contribution plan. Likewise, the employer may have no way to determine the amount of additions which would have been allowable for his employees under the provisions of the committee bill, had those provisions been in effect for the years in question. Accordingly, the Secretary or his delegate is authorized to prescribe regulations establishing reasonable assumptions which may be used by the employer in determining the amount of additions and allowable additions for years prior to the effective date of these provisions.

Likewise, in the case of plans which may be established in the future, the employer will be aware that no contributions or additions have been made on behalf of his employee, but may not have adequate records to establish the amounts of allowable additions which could have been made. Thus, the Secretary or his delegate is authorized to establish reasonable assumptions which may be used by the employer

Effective dates and transition rules

In general, the amendments with respect to H.R. 10 plans, including the provisions increasing the amount of the deductible contributions

which may be made on behalf of the self-employed, are to apply to taxable years beginning after December 31, 1973. However, the rules facilitating the use of defined benefit plans for the self-employed, as well as the rules modifying the treatment of excess contributions under H.R. 10 plans and the rules with respect to the taxation of premature distributions, are to apply to taxable years beginning after December 31, 1975.

The new rules with respect to corporate limitations will apply to contributions made or benefits accrued in years beginning after December 31, 1975.

However, the committee was concerned that the limitations imposed on the bill should not have the effect of cutting back the pension of anyone under the provisions of an existing plan. Accordingly, the bill contains a transition rule for any individual who is, on October 2, 1973, an active participant in a defined benefit plan. Under the terms of this provision, an employee may receive an annual benefit which does not exceed 100 percent of the individual's annual rate of compensation on October 2, 1973 (including bonuses whether or not they were taken into account in the base for benefits under the plan as in effect on that date). However, the benefit may not exceed the annual benefit which would have been payable to the participant on retirement if all the terms and conditions of the plan in effect on October 2, 1973, (without regard to any amendments to the plan actually adopted after that date even though such amendments may, for other purposes, be given retroactive effect) had remained in effect until the employee's retirement, and his compensation taken into account under the plan for any period after October 2, 1973, had not exceeded his annual compensation on that date.

If the plan provides for a postretirement cost of living adjustment on October 2, 1973, such an adjustment may also be taken into consideration in determining the allowable benefits for a participant under the "grandfather" provision. Any future increases in the bill's basic benefit limitation under the bill's cost of living adjustment provision, however, are applicable only to the generally applicable limits and not to the limits under the transitional "grandfather" clause. As a result, in future years many individuals are likely to elect to use the regular benefit limits despite the fact that they are eligible to use the "grandfather" provision, because the adjusted regular limits may permit a higher allowable benefit limit.

Individuals who wish to use these transitional provisions must elect to do so in a time and manner to be prescribed under regulations. Generally, the election will be made by the plan administrator in the year in which the employee retires. Once made, the election will be irrevocable.

Revenue effect

By increasing the maximum amount that self-employed persons will be allowed to deduct as contributions to H.R. 10 plans to 15 percent of earned income up to $7,500 a year, a revenue loss is estimated that will amount to $175 million annually. A revenue gain of $10 million is estimated to be the result of the provision that applies certain limitations on the contributions and benefits under retirement plans. The net

result of these two provisions that are designed to equalize tax treatment for pension plans is a revenue loss of $165 million. These estimates assume 1973 levels of income and employment.

F. Employee Savings for Retirement

1. Individual retirement accounts (sec. 2902 of the bill and secs. 219, 402, 408, 409, 4973, 4974, and 6693 of the code)

Present Law

Generally, an employee is not allowed a deduction for amounts contributed from his own funds to a retirement plan. While an employer's qualified plan may allow employees to contribute their own funds to the plan,[1] no deduction is allowed for these contributions (except to the extent that tax excludable contributions made in connection with salary reduction plans may be viewed as employee contributions). However, the income earned on employee contributions to an employer's qualified plan is not taxed until it is distributed.[2]

General reasons for change

While in the case of many millions of employees, provision is made for their retirement out of tax-free dollars by their participation in qualified retirement plans, many other employees do not have the opportunity to participate in qualified plans. Often, plans are not available because an employer is not willing to incur the costs of contributing to a retirement plan since, in general, the employer contributes funds which are in addition to the compensation otherwise paid his employees. Employees who are not covered under a qualified plan are disadvantaged by the fact that earnings on their retirement savings are subject to tax, and grow more slowly than the tax-sheltered earnings on contributions to a qualified plan.

Your committee's bill deals with this problem by making available a special deduction for amounts set aside for retirement by employees who are not covered under a qualified plan (including an H.R. 10 plan), a government plan, or a tax exempt organization annuity plan (sec. 403(b)). Individuals in this status, in computing their income tax, will be permitted to deduct up to $1,500 a year or 20 percent of compensation, whichever is less, for contributions to an individual retirement account. The earnings on this amount will also be tax free. As in the case of H.R. 10 plans, the amounts set aside plus the earnings are to become taxable to the individual generally after he has reached retirement age, when he receives benefits from the account.

Explanation of provisions

In general.—Under your committee's bill, a retirement savings deduction is to be allowed individuals for contributions to an individual retirement account, an individual retirement annuity, or a qualified

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[1] Generally, if the plan allows it, employees may make voluntary contributions to a qualified retirement plan of up to 10 percent of compensation. I.R.S. Publication 778, p. 14 (Feb., 1972).

[2] At one time, Congress took the position that a contribution to an H.R. 10 plan on behalf of a self-employed person was made half by the employer and half by the self-employed person: no deduction was allowed for half of the contributions (presumably, that half "contributed by" the self-employed person). This limitation (sec. 404(a)(10)) was repealed for taxable years after December 31, 1967.

retirement bond. The maximum annual deduction is to be $1,500, or 20 percent of compensation, whichever is less. Amounts allowed as a retirement savings deduction are to be deductible from gross income (instead of from adjusted gross income) so that any taxpayer, even a taxpayer who does not itemize but uses the standard deduction, is to be allowed a retirement savings deduction. In this manner, this program will be available to the widest possible group of taxpayers. Individual retirement accounts may be established by individuals, by employers for the benefit of their employees, and by labor unions for the benefit of their members. This will widen the availability of the retirement savings deduction.

If nondeductible contributions are erroneously made to an individual retirement account during the year (*e.g.*, because contributions are larger than the amount deductible), the individual generally will be able to withdraw the excess contribution without penalty. If the excess contribution is not withdrawn, generally it is to be subject to a nondeductible 6 percent excise tax in each year in which it remains in the individual retirement account.

Except in the case of excess contributions, amounts generally are to be withdrawn from an individual retirement account only after reaching retirement age. To encourage an individual to retain these amounts for retirement, the bill generally imposes a penalty tax of 10 percent of the amount received on premature distributions occurring before age 59½ or disability. Upon reaching age 59½, however, a participant may withdraw his funds even if he continues to work. In addition, the bill generally requires that funds in a retirement account are to be withdrawn from the account starting no later than the year in which the participant reaches age 70½. If insufficient withdrawals occur from that time on, a nondeductible excise tax is to be imposed on the excess accumulation that should have been withdrawn.

Generally, all amounts received from an individual retirement account will be taxed in full as ordinary income, since neither the contributions nor the earnings thereon will have been subject to tax previously. No capital gains or special lump-sum distribution rules are to apply to receipts from these accounts. However, the individual may use the general five-year averaging provisions (sec. 1301).

Your committee recognizes that individuals may wish to change the assets in which their contributions are invested. To facilitate this, the bill allows a limited tax-free "rollover" between individual retirement accounts. Also, a tax-free rollover is allowed from qualified plans to an individual retirement account.

Deduction for contributions to individual retirement account, etc.—Under the bill, an eligible individual is to be allowed a maximum retirement savings deduction of up to $1,500 per year or 20 percent of compensation includible in gross income, whichever is less, for contributions to an individual retirement account, individual retirement annuity or qualified retirement bond. Your committee intends that, for this purpose, compensation generally is to include only compensation for personal services, and is not to include earnings from property (such as interest and dividends). Additionally, since self-employed persons are to be allowed the retirement savings deduction (if they do not participate in an H.R. 10 plan), compensation in-

cludes earned income (as defined in sec. 401(c)(2)). If the individual's compensation is not includible in his gross income (*e.g.*, as income earned from sources outside the United States) it is not to be treated as compensation for purposes of the retirement savings deduction.

The retirement savings deduction is to be available to each eligible individual. Consequently, an individual's marital status and whether he or she files a joint tax return will not affect contributions for the retirement savings deduction. If both husband and wife are eligible, they can each make contributions to his or her own individual retirement account, etc., and each is to be eligible for a deduction of up to $1,500 (or $3,000 total on a joint return). In addition, the bill also provides that community property laws of a State or other jurisdiction are not to apply with respect to the retirement savings deduction. For example, if husband and wife live in a community property State and the husband earns $7,500, the husband may contribute up to $1,500 (20 percent of $7,500) to an individual retirement account, etc., even though half of the income is owned by the wife under State law. Also, if the husband earns $15,000 and his wife earns no income, only $1,500 may be contributed and deducted by the husband under the retirement savings deduction and no contribution may be made by his wife.

The retirement savings deduction is to be allowed as a deduction from gross income.

For an individual to be allowed a retirement savings deduction, contributions are to be made to an individual retirement account, etc., within the taxable year for which the deduction is claimed. Thus, if a taxpayer is on a calendar year, contributions are to be made no later than December 31 of the year for which he wishes to take a deduction.[3] Contributions must be made in cash (currency, checks, etc.), and contributions in property are not to be deductible.

Deduction not allowed for active participants in qualified, etc., plans.—Your committee intends that the deduction for retirement savings (and contributions to individual retirement accounts, etc.) generally is to be available only where an individual does not participate in any other tax-supported retirement plan. Therefore, the retirement savings deduction is to be allowed an individual only if he is not an active participant in a qualified plan (sec. 401(a)), a qualified annuity plan (sec. 403(a)), a qualified bond purchase plan (sec. 405), a government plan, or a section 403(b) annuity at any time during the taxable year for which the deduction is claimed.[4]

Generally, for purposes of the retirement savings deduction, an employee is to be considered an active participant in a plan if, for the year in question, benefits are accrued under the plan on his behalf (as in a defined benefit pension plan), the employer is obligated to

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[3] If, at the end of the year, he is not sure of the total amount that he can deduct, the individual can make a slightly larger contribution than otherwise allowable, and will have until the time for filing his tax return for that year to withdraw the excess without penalty.

[4] An individual who is an active participant in a tax-exempt organization annuity plan (sec. 403(b)) is not to be entitled to a retirement savings deduction. An individual is to be considered an active participant in a section 403(b) annuity plan even if, during the period in question, his rights under the annuity contract are forfeitable. Consequently, if contributions are made on behalf of an individual under a section 403(b) annuity contract in anticipation that his rights will later be nonforfeitable, he cannot make contributions to an individual retirement account, etc., and he is not to be entitled to the retirement savings deduction for the taxable year in question.

contribute to the plan on the employee's behalf (as in a money purchase pension plan), and the employer would have been obligated to contribute to the plan on the employee's behalf if any contributions were made to the plan (as in a profit-sharing plan). An individual is to be considered an active participant in a plan if he is accruing benefits under the plan even if he only has forfeitable rights to those benefits. Otherwise, if an individual were able to, *e.g.*, accrue benefits under a qualified plan and also make contributions to an individual retirement account, when he later becomes vested in the accrued benefits he would receive tax-supported retirement benefits for the same year both from the qualified plan and the retirement savings deduction. However, to avoid substantial administrative problems, if an individual becomes a participant in a plan and under that plan is given past service credit for prior years of service with the employer, he will not be considered to have been an active participant in the plan in the years for which the past service credit is given.

An individual generally is not to be considered to be an active participant in a plan after he has separated from service with a vested interest in the plan. Also, an individual is not to be considered an active participant in a plan after his employer has completely terminated contributions under the plan, even though the trust continues to provide benefits for the individual.

For purposes of the retirement savings deduction, a government plan is a plan established by the Federal Government or a State (including the District of Columbia) or local government (or an agency or instrumentality of the same) for its employees. For example, the Federal Civil Service Retirement Plan is a government plan. However, Social Security and Railroad Retirement plans are not to be considered government plans. Even if a government plan is not tax qualified, an individual who is an active participant in the plan is not to be able to participate in an individual retirement account, etc.

If an employee is given the option to elect not to be covered by a qualified, etc., plan and he so elects, generally he will not be treated as being an active participant in the plan for purposes of the retirement savings deduction. For example, if an employer offers a qualified plan that requires matching employee contributions, but the employee elects not to participate in the plan, he is not to be considered as an active participant in the plan. However, where an employee who opts out of a qualified plan can elect later to become an active participant in it and can receive benefits for all prior years (for which he opted out) upon payment of, *e.g.*, all mandatory contributions plus interest for the prior periods, the employee is to be treated as being an active participant in the plan for the prior years with respect to which he pays the required amount and accrues benefits. Otherwise, an individual could receive a retirement savings deduction for a number of years and also, at his own discretion, later become covered by a qualified plan for the same years.

Excess contributions to individual retirement account, etc.—Under the bill, generally only deductible amounts are to be contributed to individual retirement accounts or to buy an individual retirement annuity or a qualified retirement bond, and no nondeductible employee

contributions are to be made.[5] However, your committee recognizes that the contributions made on behalf of an employee to an individual retirement account, etc., may be larger than the individual's allowable retirement savings deduction. For example, an individual who has contributed to a retirement account may change jobs in mid-year and become an active participant in a qualified plan of his new employer during that year. In this case, a retirement savings deduction is not to be allowed and the contributions made to an individual retirement account will be excess contributions.

In such a case, the individual may avoid penalties on the excess contribution if he receives a timely distribution from the individual retirement account (or annuity) of the excess contribution, plus the income earned on that excess amount to the date of distribution. In general, a distribution will be timely if it is received from the account or annuity no later than the time (including extensions) for filing the employee's tax return for the year in question.[6]

If timely distribution of excess contributions (and income thereon) is made from an individual retirement account or annuity, the excess contribution that is returned is not to be included in gross income, since the taxpayer has not taken a deduction for this amount. However, any net income attributable to, and distributed with, the excess contribution is to be included in the individual's income in the year received, since it will not have been previously taxed as income to him.

Your committee believes that generally it is necessary to provide a direct incentive to avoid excess contributions to individual retirement accounts and annuities and to stimulate timely withdrawals of excess contributions.

Therefore, under the bill a nondeductible excise tax is to be imposed on contributions to individual retirement accounts and annuities in excess of the amounts deductible as retirement savings, unless these amounts (with earnings) are timely distributed from the account. This tax is to prevent the unwarranted tax deferral that would exist from income on excess contributions, and is to be 6 percent of the amount of the excess contributions. The excise tax is to be paid by the individual who made the excess contributions.

If an excess amount is contributed to an individual retirement account (or annuity) in one year and the excess is not eliminated in later years, the excise tax is to be owed on the excess amount for the year of contribution and for each successive year until the excess is eliminated. (The amount of the excess is to be determined as of the end of the individual's taxable year.) However, an individual may eliminate an excess contribution in later years if he does not take his maximum allowable deduction for retirement savings in the later years. Under the bill, if an individual takes less than the maximum amount allowed as a retirement savings deduction in any year after the excess contribution is made, the difference between the maximum allowed deduction and the amount taken is to reduce a prior excess contribution.[7]

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[5] However, as discussed below, nondeductible "rollover contributions" are to be available to individual retirement accounts in certain circumstances.

[6] The time for filing is intended to be the due date for filing the original return (plus extensions) and is not to include the time for filing amended returns. The time for distributions of excess purchases of qualified retirement bonds is slightly different, as described below.

[7] However, contributions less than the maximum in prior years are not to reduce the excess contribution; otherwise, the limits on contributions could be effectively circumvented.

For example, in 1975, an individual earns $7,000 and contributes $1,500 to an individual retirement account. His maximum available deduction is $1,400 (20% of $7,000), so there has been an excess contribution of $100. If he received the $100 (plus income earned thereon) by the time he files his tax return for 1975, he would not be subject to the excise tax. However, if he does not receive payment by that time, he will owe an excise tax of $6 (6 percent of $100). In 1976, he earns $7,500 and contributes $1,500 to his individual retirement account. Since there is an excess contribution in his account (as a result of the 1975 excess contribution), the individual has until the time for filing his tax return for 1976 to receive a distribution of $100 (plus income earned on the contribution) from the retirement account. If the $100 is returned by this time, the individual will not receive a deduction for 1976 for the full $1,500 (but will only receive a deduction for $1,400), and is to take into income the earnings paid out from the account in the year received. If the individual does not receive the excess contribution (plus earnings) in this manner, he is to owe a 6 percent excise tax for 1976, since at the end of that year there still will be an excess in the account attributable to the 1975 contribution. In 1977, he earns $7,500 and contributes $1,400, although he could take a maximum retirement savings deduction of $1,500. In this case, the excess contribution is to be reduced by the difference between the maximum deduction available and the deduction taken, which is $100 ($1,500 less $1,400). Consequently, the excess attributable to the 1975 contribution is to be eliminated and no excise tax is to be owed for 1977.

If the individual is no longer eligible to participate in an individual retirement account or retirement annuity, so he cannot forego a contribution to the account (or cannot withdraw part of the previous year's contribution to reduce the excess contribution), to avoid the 6 percent excise tax he may withdraw the excess contribution (subject to the 10 percent additional tax if he receives the distribution before age 59½ or disability). The amount received in this case is to be included in full in the individual's gross income since, like all amounts in an individual retirement account, this amount will have no basis.

Your committee intends that the retirement savings deduction is to be used for retirement purposes and is not to be available for accumulating income on a tax-free basis after retirement. Therefore, under the bill, no contribution is to be made to an individual retirement account, etc., and no retirement savings deduction is to be allowed for a taxable year in which the individual becomes age 70½ (and for any later year). This conforms to the general requirement (discussed below) that distributions must be made from an individual retirement account, etc., no later than the year in which a participant attains age 70½. If a contribution is made for an employee who has attained age 70½, it is to be treated as an excess contribution subject to the 6 percent excise tax.[8]

Contributions to individual retirement accounts, etc.—miscellaneous.—Under the bill, an employer (including a self-employed person) may establish an individual retirement account for the benefit of some or all of his employees and make contributions to the account on their

[8] The contribution also may become subject to the excise tax on excess accumulations, described below.

behalf either in the form of additional compensation or a salary reduction plan. However, this is to be available only for employees who are not covered by qualified, government, or exempt-organization plans. Any employees who are not covered under such plans (including those excluded from coverage due to length of service requirements or because of age) may be covered under an employer-sponsored individual retirement account or, alternatively, may establish their own individual retirement accounts.

Amounts contributed to an individual retirement account, etc., by an employer for an employee generally are to be included in the employee's gross income as compensation, whether or not these amounts are deductible. However, if an employee pays his employer amounts out of after-tax dollars to be contributed to an individual retirement account, etc., on his behalf by the employer, this amount is not to be included in the employee's income. Amounts that constitute employee compensation and are contributed to an individual retirement account, etc., by the employer are to be subject to tax under the Federal Insurance Contributions Act (FICA) and the Federal Unemployment Tax Act (FUTA). However, these contributions are not to be subject to withholding if it is reasonable for the employer to believe at the time of contribution that the employee will be entitled to a deduction for the payment. In this regard, generally it will be reasonable for an employer to make a lower withholding only when the amount contributed to the individual retirement account, etc., is based on periodic withholding from compensation otherwise paid the employee. Otherwise, the employer generally will not be able to reasonably estimate the amounts to be contributed to the account, etc., and will not be able to base his lower withholding on the estimate of such contributions.

Since the deduction for contributions to individual retirement accounts is to be available to the self-employed as well as employees, the bill will also benefit people such as jockeys, who in years of low earnings are limited in what they can contribute to an H.R. 10 plan by the 15 percentage-of-income limitation if they wish to contribute in excess of $750.

Individual retirement accounts—requirements.—Under the bill, an individual retirement account generally is to be a domestic trust created or organized by a written instrument for the exclusive benefit of an individual or his beneficiaries. The governing instrument is to provide that the trustee will not accept more than $1,500 per year on behalf of any individual, and is to provide that the individual's interest in the account is nonforfeitable, without exception.

The balance in an individual retirement account generally may be invested in any assets that are acceptable investments for a qualified plan. The account balance could, for example, be invested in insurance annuity contracts, in a savings account with a savings and loan institution or a credit union, or in stock of a mutual fund. However, account assets generally are not to be commingled with other property except in a common trust fund.

Under the bill, no assets of an individual retirement account are to be invested in life insurance contracts and the trust instrument must so provide. Thus, the account cannot purchase life insurance protec-

tion under any retirement income, endowment, or other contract which includes a life insurance element. The individual retirement account is to be used to provide retirement income and life insurance is an asset designed for a different purpose—to provide funds for survivors. In addition, the individual retirement account is to receive only amounts that are deductible under the retirement savings deduction. If life insurance protection were purchased with contributions to an individual retirement account, the amount paid for the insurance would not be deductible by the participant and an allocation would have to be made each year between the deductible and nondeductible amounts, substantially complicating the administration of an individual retirement account. Consequently, your committee believes that if life insurance protection is to be acquired, it should be done through the many other methods now available, and not through the individual retirement account.

The trust instrument also is to provide that the entire interest of a participant will be distributed by the end of the year in which he reaches 70½ or that distribution will begin by that time and (in accordance with regulations to be issued) will be distributed over the life of the participant (or lives of the participant and his spouse), or over a period of years not exceeding the life expectancy of the participant or the participant and his spouse. This is substantially the same requirement as now applies to distributions from H.R. 10 plans.

The bill also generally requires, with respect to distributions, that the trust instrument must provide that if a participant (or his surviving spouse) dies before receiving the entire interest in the account, the entire remaining interest will be distributed within five years of death or used to purchase an immediate annuity payable to the beneficiaries. This also is substantially the same requirement as now applies to distributions from H.R. 10 plans.

Under the governing instrument, the trustee of an individual retirement account generally is to be a bank (described in sec. 401(d)(1)).[9] In addition, a person who is not a bank may be a trustee if he demonstrates to the satisfaction of the Secretary of the Treasury that the way in which he will administer the trust will be consistent with the requirements of the rules governing individual retirement accounts. It is contemplated that under this provision the Secretary of the Treasury generally will require evidence from applicants of their ability to act within accepted rules of fiduciary conduct with respect to the handling of other people's money; evidence of experience and competence with respect to accounting for the interests of a large number of participants, including calculating and allocating income earned and paying out distributions to participants and beneficiaries; and evidence of other activities normally associated with the handling of retirement funds. Additionally, your committee expects that the Secretary generally will give weight to evidence that an applicant is subject to Federal or State regulation with respect to its activities, where this regulation includes, e.g., suitable rules of fiduciary conduct.

[9] The bill amends section 401(d)(1) to provide that Federally insured credit unions are to be considered "banks" for purposes of determining who can be a trustee of an individual retirement account, etc.

It is anticipated that the Secretary probably will not allow individuals to act as trustees for individual retirement accounts.

Although the bill generally requires that a trustee administer an individual retirement account trust, the bill also provides that a custodial account may be treated as a trust, and that a custodian may hold the account assets and administer the trust. Under the bill, a custodial account may be treated as a trust if the custodian is a bank (described in sec. 401(d)(1)) or other person, if he demonstrates to the satisfaction of the Secretary of the Treasury that the manner in which he will hold the assets will be consistent with the requirements governing individual retirement accounts. Again, it is contemplated that the Secretary will require substantial evidence (as described above) to determine if a person other than a bank may act as custodian.

The bill provides that the trustee of an individual retirement account (or issuer of a retirement annuity) is to report annually to the Secretary of the Treasury regarding contributions to the account or annuity and regarding other matters as prescribed by regulations. Your committee intends that the regulations will include a requirement that the trustee or issuer file annual information returns with the Internal Revenue Service (with copies to each individual for whose benefit a retirement account or a retirement annuity is maintained) on the amount of contributions to and distributions from the account or annuity. Under the bill, there is to be a penalty of $10 for each failure to report, unless due to reasonable cause.

Individual retirement annuities—requirements.—Under the bill, retirement savings also may be invested in annuity contracts, called individual retirement annuities. An individual retirement annuity is to be an individual annuity contract that is issued by an insurance company in the name of the person who pays for the annuity (or on whose behalf payments are made). The individual's rights in the contract are to be nonforfeitable, without exception. In order to assure that payments under the contract will be used for retirement, the terms of the contract are to specifically provide that it is not transferable. Similarly, it is intended that the terms of the contract will prohibit the owner of the contract from using it as security for a loan.

To conform to the limits on the retirement savings deduction, the contract also is to provide that the annual premium is not to be greater than $1,500.

Additionally, as with individual retirement accounts, it is intended that the annuity contract is not to include any life insurance element. Any refund of premiums is to be applied (before the close of the calendar year following the refund) toward payment of future premiums or toward the purchase of additional benefits, and the annuity contract is to so provide.[10]

To assure that retirement savings are used for retirement purposes, the annuity contract is to include provisions requiring distribution of

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[10] This applies only with respect to refunds of premiums that were deductible and, therefore, properly paid. With respect to premiums in excess of the amount deductible under the retirement savings deduction, as discussed above it is intended that the excess premiums may be repaid to the individual within the time for filing his tax return for the year in question. If no deduction was taken, no income is to be recognized on receipt of this excess premium. However, earnings on the excess premium are to be distributed along with it, and the earnings are to be reported as income in the year received.

the annuity beginning at the close of the year when the contract owner reaches age 70½. (This provision is similar to the analogous provision regarding individual retirement accounts and H.R. 10 plans.) Also, the contract is to include provisions with respect to distribution after the death of the contract owner (and his spouse) that are similar to the provisions to be included for individual retirement accounts.

Employer- and union-established individuals retirement accounts.—Under the bill, employers and labor unions are to be able to establish individual retirement accounts for their employees or members. In this case, the same rules that govern individual retirement accounts generally are to apply to an employer- or union-established individual retirement account. For example, the interest of the participants in the account are to be nonforfeitable without exception and the trust instrument is to so provide. Under the bill, additional requirements also are to be met by employer- and union-established individual retirement accounts.

An employer or union may establish a single individual retirement account trust for a number of employees or members. However, there is to be a separate accounting for each participant's interest in the individual retirement account, and the trust instrument is to provide for such an accounting. Although there is to be separate accounting for each of the participants, this does not mean that the contribution on behalf of each participant must be held separately from the other assets in the retirement account, but the assets of the account may be held and invested together for all participants.

Under the bill, the trust instrument of an employer- or union-established individual retirement account also is to provide that assets are to be held exclusively for the benefit of the participants or their beneficiaries. The exclusive benefit rule governing individual retirement accounts established by an employer or a union is the same rule that governs qualified plans and trusts (sec. 401), and all of the requirements that must be met under the existing exclusive benefit rules also are to be met by these individual retirement accounts. For example, under the present exclusive benefit rule, the trust instrument must make it impossible for corpus or income to be used for, or diverted to, purposes other than for the exclusive benefit of the participants or their beneficiaries; this same rule is to apply to individual retirement accounts. Additionally, the exclusive benefit rule is to apply to individual retirement account investments in the same way as it applies to qualified plan investments.

It is intended that where an employer has both a qualified plan and an employer-sponsored retirement account, the qualified plan must meet the nondiscrimination standards without regard to the individual retirement account.

Taxation of individual retirement accounts, prohibited transactions, etc.—Generally, the bill provides that an individual retirement account is to be exempt from Federal income taxation.[11] However, if the retirement account has unrelated business taxable income, it is to

[11] As with annuities geenrally, the owner of an individual retirement annuity is not to be currently taxed on the annual increased value of the annuity, but is taxed on receipt of annuity payments. Also, as with Series E bonds generally, the income earned on the qualified retirement bonds is generally not taxable until redemption (or "maturity," if earlier).

be subject to tax on this income under section 511 of the Internal Revenue Code. All of the rules relating to unrelated business income (including those in sec. 512 respecting unrelated business taxable income, sec. 513 respecting unrelated trade or business, and sec. 514 respecting unrelated debt-financed income) that apply for purposes of section 511 are to apply with respect to individual retirement accounts.

The bill also applies the existing prohibited transaction rules (sec. 503(b) and sec. 503(g)) to individual retirement accounts. Under the bill, if an individual engages in a prohibited transaction with his individual retirement account trust, his account is to become disqualified as of the first day of his taxable year in which the prohibited transaction occurs.[12]

With respect to an individual retirement account established by an employer or a union, if a participant in the account engages in a prohibited transaction with the individual retirement account trust, that individual's account in the trust is thereupon to be treated as a separate individual retirement account trust and this deemed separate trust is to become disqualified as of the first day of the individual's taxable year in which the prohibited transaction occurs.

For example, if an employer with 100 employees establishes an individual retirement account for all his employees and one employee violates the prohibited transaction rules by borrowing money from the retirement account trust, then the whole retirement account trust is not to be disqualified. However, that portion of the trust which constitutes the separate account of the employee who engaged in the prohibited transaction is to be disqualified. In this way, individuals will have a substantial incentive to avoid engaging in prohibited transactions, and if a prohibited transaction occurs, only the individual who engages in that transaction (or the individual who is related, *e.g.*, by marriage, to the person who engages in the transaction) will be penalized.

If an individual retirement account is disqualified, the participant is then to be taxed as if he had received a distribution (on the first day of his taxable year in which the prohibited transaction occurred) of the fair market value of all the assets in his account. Since his basis in his account is to be zero, the entire amount received will be ordinary income. In addition, if the deemed distribution occurs before the individual is age 59½ or disabled, the 10 percent additional tax (described below) on premature distributions is to apply. (Otherwise, a participant who wanted a premature distribution would have an incentive to engage in a prohibited transaction.) The individual is to be taxed currently on all income earned in his account after the disqualification occurs, since the account will cease being an individual retirement account.

With respect to individual retirement annuities (which are nontransferable and cannot be hypothecated), the bill prohibits the owner of the contract from borrowing money from the insurance company issuing the contract, under or by use of the contract. If any prohibited

[12] The bill provides that an individual is to be treated as "creator" of the account for the purpose of applying the prohibited transaction rules. Under sections 503(b) and 503(g), certain transactions between a trust and its "creator" (and persons attributed to the creator) are prohibited.

borrowing occurs (regardless of the amount involved) the contract is to lose its qualification as an individual retirement annuity as of the first day of the taxable year of the contract owner in which the borrowing occurs. In this case, the owner is to include in income for that year the fair market value (which may not be the same as the cash surrender value) of the contract as of the first day of that year. Since the owner's basis in the contract is to be zero, the entire amount deemed distributed is to be taxable to him as ordinary income. In addition, the 10 percent additional tax (described below) on premature distributions may apply to this deemed distribution. (If the annuity contract is sold, exchanged or hypothecated, in violation of its terms, it is intended that the same consequences will occur as with a prohibited borrowing from an insurance company.)

An employer who maintains an individual retirement account also is not to engage in prohibited transactions (as defined in sec. 503(b) and 503(g)) with the retirement account. Otherwise, the employer—who may have substantial control over the trust—would be able to engage in dealings with the trust to the detriment of the employees who participate in it. Therefore, the bill also treats the employer as the creator of an individual retirement account trust which he maintains for purposes of the prohibited transaction rules.

Your committee believes that it would be inappropriate for a prohibited transaction involving the employer, or persons attributable to the employer (and not involving any account participant),[13] to result in a penalty to any participant. Consequently, the bill provides that if an employer (or persons related to him) engages in a prohibited transaction with a retirement account maintained by him, the employer is to lose all deductions for compensation to the extent of the contributions to the retirement account in his taxable year in which the prohibited transaction occurs, and for all prior open years.

For example, if the employer contributed to the account (under a salary reduction type plan) $10,000 in each of 1975, 1976, and 1977 and if he engaged in a prohibited transaction in 1977, his deduction for the $10,000 contribution in 1975, the $10,000 contribution in 1976, and the $10,000 contribution in 1977 would be disallowed (if all these years were open). No deduction for these amounts would be allowed under any provision of the Internal Revenue Code (including but not limited to sec. 162).[14]

Distributions from individual retirement accounts, etc.—Generally, the proceeds from an individual retirement account (individual retirement annuity and qualified retirement bond) are to be fully taxable to the individual when distributed. Since contributions to the account, etc., will be made with tax-free dollars and income of the account, etc., will not be taxed as earned, the individual's basis in the account, etc., is to be zero.

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[13] Where the employer is also a participant (such as a self-employed person who participates in the account), the consequences attendant upon "employer" status are to occur.

[14] Where contributions are made to an employer-established individual retirement account both by the employer and individual participants, the employer is to lose deductions for compensation paid in open years to the extent of the total contributions to the account in those years. For example, in 1975, the employer makes $2,500 of contributions to the individual retirement account which he maintains and the employer engages in a prohibited transaction with the trust in that year. Also in 1975 individual participants contribute $2,500 to the individual retirement account. In 1975 the employer pays more than $5,000 of compensation to his employees. For 1975, the penalty on the employer for engaging in the prohibited transaction is a disallowance of $5,000 of deductions for compensation paid.

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The amounts distributed from a retirement account, etc., are not to be eligible for capital gains treatment, and the special averaging rules applicable to lump-sum distributions (under sec. 72) also are not to be available. This should encourage the individual to take down the amounts ratably over the period of his retirement. However, the individual is to be permitted to use the general averaging rules (sec. 1301).

If an individual borrows money, using his interest in the account as security, the portion used as security is to be treated as a distribution from the account to the individual. This treatment is also consistent with your committee's intention to encourage retirement savings since in this case if the employee uses his account as security for a loan he has no funds left for retirement.

For purposes of the estate and gift taxes, the amounts in individual retirement accounts, individual retirement annuities, and qualified retirement bonds are not to be excluded from tax (secs. 2039(c) and 2517). This too is consistent with your committee's intention that the funds be used during the individual's retirement period.

If an annuity contract is distributed from an individual retirement account, it is not to be included in income when received if the annuity contract generally meets the rules governing individual retirement annuities. In this case, the participant essentially will have received an individual retirement annuity contract and all the individual retirement annuity rules (including those with relation to borrowing under or by use of the contract) are to apply to the distributed contract.

Your committee intends that savings accumulated through an individual retirement account, etc., are to be used for retirement purposes and should not be distributed before the participant reaches age 59½ or is disabled; [15] this follows present law governing H.R. 10 plans. Under the bill, if there is a premature distribution, the individual's income tax otherwise due is to be increased by 10 percent of the total amount of the premature distribution that is included in his gross income for the taxable year. For example, if an unmarried individual with taxable income (after all exemptions and deductions) of $20,000 receives a premature distribution of $3,000, his income tax for the year of receipt would be $6.690 ($5.230 on $20,000 of taxable income, plus $1.160 on the $3,000 premature distribution, plus a $300 penalty tax on the premature distribution).

The 10-percent additional tax is to apply to any premature "deemed distribution" that occurs on account of a prohibited transaction involving a retirement account or retirement annuity.

The 10-percent additional tax generally is not to be offset by any tax credits (other than the refundable credits for overwithholding, overpayment of tax, and the gasoline tax credit). Also, this tax is not to be treated as reducing the individual's tax liability under the minimum tax provisions (sec. 56).

The 10-percent penalty tax on premature distributions is not to apply in the event of death or disability. However, your committee expects that the Internal Revenue Service will require that the custodian must receive proof of disability if making distributions under the

[15] Disability is to be determined under the same rules that apply to H.R. 10 plans (sec. 72(m)(2)).

disability provision. Generally it is intended that the proof be the same as where the individual applies for disability payments under social security.

(The 10-percent penalty tax also is not to apply to a distribution of excess contributions made within the time for filing the individual's tax return for the year in which the excess contributions occur.)

Your committee also intends that the amounts contributed to an individual retirement account are to be used for retirement purposes, and are not to be retained in the account, beyond the maximum age for payout. If sufficient payments are not timely made from the retirement account (or retirement annuity), then an excise tax is to be imposed on the amount of the under-distribution.[16] The payments needed to avoid this excise tax are to be provided by regulations and are to follow the rules (described above) with respect to payment no later than the year in which the participant attains age 70½ (or payment on the death of a participant or his spouse). If the amount paid out is less than the minimum required, there is to be a nondeductible 50 percent excise tax on the difference between the minimum payout required for the year in question and the amount actually paid out. The tax is to be paid by the individual to whom the minimum payments should have been made. For example, if the minimum annual amount that is to be distributed from a retirement account is $100, and only $60 is distributed by the end of the taxable year (of the payee), then an excise tax of $20 (50 percent of $40) is to be paid by the payee.

Tax-free rollovers.—To permit flexibility with respect to the investment of an individual retirement account, the bill provides that money or property may be distributed from an individual retirement account to the person for whose benefit the account is maintained without payment of tax, provided this same money or property is reinvested by the individual within 60 days in another qualifying individual retirement account maintained for this benefit. Rollover transfers to an individual retirement account are, of course, subject to the same limits and rules as other individual retirement accounts (such as, the rules relating to premature distributions or prohibited transactions). The transfer may be desired because the individual desires to shift his investments, for example, from, or to, an annuity contract, a mutual fund, or a savings account.[17]

Before releasing the account, the committee anticipates that the trustee will be required by the Internal Revenue Service to receive a declaration of intention from the individual as to the proposed reinvestment (except in the case of an individual who was entitled to receive a distribution because of his retirement at age 59½, or because of disability). The custodian is also to be required to notify the Service that a distribution of assets from the account had been made and the reason for making the distribution.

Also, since annual contributions to an individual retirement account cannot be larger than $1,500 except for rollover contributions, it is expected that the trustee who receives a rollover contribution will require a declaration from the individual that the payment is a rollover contribution.

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16 As discussed below, slightly different rules apply to the qualified retirement bonds.

17 Amounts cannot be rolled over to an individual retirement account from a disqualified (through prohibited transactions, etc.) retirement account (or disqualified retirement annuity). Similarly, excess contributions to a retirement account, etc. cannot be rolled over.

If property other than money is received as a distribution, to be eligible for the tax-free rollover, the same property received is to be contributed to the retirement account. For example, if an individual receives stock in a distribution from a qualified plan, the same stock that is received is to be contributed to the individual retirement account, to avoid taxation on the original distribution.

The bill also allows a tax-free rollover from a qualified plan to an individual retirement account. In this case, the plan participant would have to receive his entire interest in the plan and the distribution would have to occur on account of his separation from service and within one taxable year to qualify for a tax-free rollover.

In the case of a tax-free rollover from a qualified plan, the amount contributed to an individual retirement account is to be the same amount of money (or the same property) received from the qualified plan less the amount considered contributed to the qualified plan by the individual as an employee contribution. (The amount of contribution to an individual retirement account is to be reduced by the amount of employee contributions because all amounts in the retirement account are to have a zero basis, and it would be inappropriate to apply this zero basis rule to employee contributions.)

As with a rollover between individual retirement accounts, the same property (other than money) received from a qualified trust is to be contributed to the retirement account. However, in this case, the fair market value of the property contributed is to be no greater than the total value of the rollover contributions which can be made to the individual retirement account. For example, if an individual receives securities worth $5,000 and cash of $5,000 from a qualified plan, and $5,000 of this amount represents employee contributions, then all of the securities are to be contributed to the retirement account to qualify for the tax-free rollover.

If the rollover contributions to a retirement account are greater than the amount allowed, then the 6 percent excise tax is to apply to the excess contributions.

To prevent too much shifting of investments under this provision, the bill provides that an individual can transfer amounts between individual retirement accounts only once every three years. However, he may rollover amounts received from a qualified plan to an individual retirement account within that three year period.

Qualified retirement bonds.—In addition to the various types of investment described above in which deductible employee retirement savings can be placed, the bill also provides that these amounts may be invested annually in a special retirement bond, to be issued by the Federal Government. The bonds are to be issued under the Second Liberty Bond Act and are to provide for the accumulation of interest until the time of redemption.

The bonds are to be issued in the name of the individual on whose behalf they are purchased for retirement (the "registered owner") and are not to be transferable, under any circumstances, except to his executor in the event of his death (or to a trustee for his benefit in the event he becomes incompetent to manage his own affairs). For example, the bonds could not be pledged for the payment of debts, and could not be assigned to a trustee in bankruptcy. Also, the bonds

could not be awarded to the individual's spouse as a result of a divorce settlement. As with other investments made through the retirement savings deduction, the employee's right in these bonds are to be non-forfeitable, without exception.

In conformity with the general provisions for individual retirement accounts and retirement annuities, the bill provides that the bonds generally are only to be cashed after the individual has reached the age of 59½ years, or if he becomes disabled. If he dies, the bonds could be redeemed by his estate. There would be one further exception to cover the case of an individual who purchased the bonds, believing that he would be eligible for the deduction for that year, only to discover later that he was not eligible. For example, an individual might purchase the bond early in the year, and later become a participant under a qualified retirement plan sponsored by his employer. To meet this situation, the bill provides that the bond may be redeemed at any time within 12 months of its purchase without penalty (and without payment of interest).[18] This provision could also be used by individuals who purchased the bond, but discovered within a year that they needed the money for other purposes. In this case the Internal Revenue Service is to be notified that the bond has been redeemed and, therefore, would be on notice that no deduction would be allowed because of its purchase. Consistent with the general rules for individual retirement accounts and retirement annuities, the bill provides that the bonds are to cease to bear interest when the individual reaches age 70½. In addition, during that year the individual is also required to take any of these bonds he is still holding into income, even if he does not cash them in. It is anticipated that these rules will be set forth on the face or back of the bonds.

Also, for similar reasons, the bill provides that if the registered owner dies before age 70½ or before the bonds are cashed in, the bonds are to cease to bear interest five years after the death of the registered owner or when the registered owner would have attained age 70½, whichever is earlier.

When the bonds are redeemed, the full proceeds of the bonds, including any interest earned on them, is to be treated as ordinary income to the individual, whose basis in the bonds would be zero.[19] However, if the individual chose to do so, he could treat this income under the general averaging provisions of the tax law (sec. 1301).

As noted above, if the bond is redeemed within 12 months after the date of its issuance, the proceeds would not be included in gross income if no deduction is allowed on the purchase of the bond.

Effective date

The deduction for retirement savings is to be available for taxable years beginning after December 31, 1973. All other provisions with regard to the individual retirement account, etc. are to take effect on January 1, 1974.

[18] If the bond was not cashed within the 12 months grace period, the individual would still not receive the deduction, in those cases where he was not eligible for it. However, when he cashed in the bond at a retirement age, the proceeds of the bond would constitute income to him (since his basis in the bond would be zero under the bill).

[19] The provisions of sec. 72 (relating to annuities) and sec. 1232 (relating to bonds) are not to apply to qualified retirement bonds.

Revenue effect

This provision allowing an individual not covered by a qualified retirement plan, government plan, or section 403(b) plan to deduct annually the lesser of $1,500 or 20 percent of compensation for contributions by him or on his behalf to a tax-exempt retirement account, annuity, or bond plan established by him (or to certain trusts established by employers or associations of employees) is estimated to involve a revenue loss amount to $225 million for 1974 and rising to $355 million for 1977 (at 1973 income levels).

2. SALARY REDUCTION PLANS AND OTHER MATTERS (SECS. 1015 AND 2005 OF THE BILL AND SEC. 414 OF THE CODE)

Present law

Generally, an employee is not allowed to deduct amounts which he contributes from his own funds to a retirement plan. While an employer's qualified plan may allow employees to contribute their own funds to the plan,[1] no deduction is allowed for these contributions. However, the income earned on employee contributions to an employer's qualified plan is not taxed until it is distributed.[2]

In the case of a salary reduction plan or a cash or deferred profit-sharing plan, however, the Internal Revenue Service has permitted employees to exclude from income amounts contributed by their employers to the plan, even where the source of these amounts is the employees' agreement to take salary or bonus reductions or forgo salary increases. In the case of a cash or deferred profit-sharing plan, the employee generally has the election to take a bonus currently in cash or deferred by payment into the plan. In the case of a salary reduction plan, the employee generally agrees with his employer to reduce his salary or forgo a salary increase which is contributed into a pension plan for his benefit. In either case, if the plan met certain nondiscrimination requirements, the Internal Revenue Service in the past had taken the position that, under certain circumstances, the payment into the plan would be treated as an employer contribution, not taxable to the employee until benefits were received from the plan. The maximum amount that could be so treated generally was 6 percent of compensation.[3]

On December 6, 1972, the Service issued proposed regulations (37 Fed. Reg. 25938) which would change this result in the case of qualified pension plans by providing that amounts contributed to such a plan in return for a reduction in the employee's basic or regular compensa-

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[1] Generally, if the plan allows it, employees may make voluntary contributions to a qualified retirement plan of up to 10 percent of compensation. I.R.S. Publication 778, p. 14 (Feb. 1972).

[2] At one time, Congress took the position that a contribution to an H.R. 10 plan on behalf of a self-employed person was made half by the employer and half by the self-employed person; no deduction was allowed for half of the contribution (the half regarded as "contributed by" the self-employed person). This limitation (sec. 404(a)(10)) was repealed for taxable years after December 31, 1967.

[3] In the case of employees of tax-exempt charitable, educational, religious, etc., organizations and employees of public educational institutions, a specific statutory provision provides for employer contributions of up to 20 percent of compensation, times years of service, reduced by amounts previously contributed by the employer for annuity contracts on a tax excluded basis to the employees (sec. 403(b)). The regulations under the statute allow the employer contributions to be made under these salary reduction plans. Antidiscrimination provisions that apply generally to qualified plans do not apply to those tax sheltered annuities. The committee bill does not affect the tax treatment of these contributions (although limits are applied to them).

tion, or in lieu of an increase in such compensation, will be considered to have been contributed by the employee and consequently will be taxable income to the employee.

The proposed regulations would not affect the tax treatment of contributions to certain qualified profit-sharing plans, where the contributed amounts could be received as a bonus; however, it was indicated that there would be reconsideration of the rulings permitting exclusion of such profit sharing contributions. (Rev. Rul. 56–497, 1956–2 C.B. 284; Rev. Rul. 63–180, 1963–2 C.B. 189; Rev. Rul. 68–89, 1968–1 C.B. 402.) Public hearings have been held on these proposed regulations but regulations in final form have not yet been issued.

General reasons for charge

A number of difficult issues of policy have recently arisen in connection with salary reduction pension plans and cash or deferred profit-sharing plans. On the one hand, it is argued that these types of plans provide a vehicle which allows an employer who could not afford the cost of a conventional pension pension plan to provide pension benefits for at least those of his employees who agree to take the salary reduction. Also, it is argued, there is hope that once a salary reduction plan has been established, the employer may eventually shift to a plan where there are employer contributions with no offsetting reductions in pay for the employees.

On the other hand, many feel that it is difficult to distinguish, for purposes of tax policy, between a contribution made by the employer, at the employee's option in return for a reduction in his pay, and a contribution made by the employee after receiving his pay check from his employer, which is clearly nondeductible under present law. Also, because the salary reduction type plan covers only those employees who elect to be covered (at a cost in terms of their take-home pay), this often means that many employees will not be covered, whereas it is generally desirable that as many employees as possible be covered under the private pension system. Thus, it has been suggested by some that salary-reduction plans should be subject to stricter coverage requirements than those imposed in the past by the Internal Revenue Service.

The committee believes that it is impossible to deal with these issues in a satisfactory way without the opportunity for extensive consideration. Moreover, it believes that salary-reduction and cash or deferred profit-sharing plans should not be discouraged until there has been an opportunity for legislative consideration as to what their status should be. Accordingly, the committee bill provides that the proposed regulations should be withdrawn for one year, to give the committee a further chance for study.

Explanation of provisions

Salary reduction plans.—Under the committee bill, the proposed Treasury regulations with respect to salary reduction plans are to be withdrawn. No proposed regulations are to be issued in this area before January 1, 1975. At that point, if Congress has not acted, Treasury may, at its discretion, issue a new set of proposed regulations, which may or may not be similar to the regulations which are to be with-

drawn. However, if regulations are issued, they may not become final prior to March 16, 1975, and may not be retroactive for income tax purposes prior to January 1 of that year.

Until new regulations are issued in final form, the law is to be administered in accordance with the legal principles which were applied before January 1, 1972. In other words, salary reduction plans which already hold favorable ruling letters will continue to remain qualified during 1974, and contributions to those plans will be treated as tax-excludable to the employee on the same basis which would have been the case in 1971. Also new salary-reduction plans may apply for and receive favorable ruling letters if such letters would have been issued based on similar facts in 1971. However, the Internal Revenue Service may wish to provide that ruling letters issued to new plans in this area are limited to the period ending with the issuance of new final regulations.

Cash or deferred profit-sharing plans are to be treated in a similar manner. During the period until new regulations are issued in final form, the qualified status and the tax treatment of contributions to such plans is to be governed under principles set forth in Rev. Rul. 56–497, 1956–2 C.B. 284, Rev. Rul. 63–180, 1963–2 C.B. 189, and Rev. Rul. 68–89, 1968–1 C.B. 402. However, if Congress does not decide otherwise, Treasury and the Service may, if they so decide, change their pre-1972 position on the law in this area, by regulations, so long as such changes do not become final before March 16, 1975, and are not retroactive prior to January 1, 1975.

For purposes of the social security taxes and the Federal withholding taxes, the regulations are not to be retroactive.

So-called "cafeteria plans", in which the employee may have a choice between cash and certain fringe benefits, some of which may be taxable and some which may normally be nontaxable (e.g., health insurance, group term life insurance within the permissible limits) are to be in the same legal situation during the period until new regulations are issued in final form as salary reduction plans. Your committee sees no difference between this type of plan and salary reduction plans, and concludes that they should receive similar treatment. Here too the committee bill requires a temporary preservation of the pre-1972 status quo, and the tax treatment of fringe benefits selected under this type of plan is to be governed by the principles which were being applied by the Internal Revenue Service prior to 1972 to salary reduction plans. In the absence of Congressional action, Treasury and the Internal Revenue Service will be free to take any action which is deemed appropriate, but the regulations may not be issued in final form prior to March 16, 1975.

The committee wishes to make clear that absolutely no inference is to be drawn from this action that Congress either agrees or disagrees with pre-1972 interpretation of the law by Treasury and the Internal Revenue Service concerning salary-reduction plans, cash or deferred profit-sharing plans or cafeteria style plans, or that it agrees or disagrees with the interpretation embodied in the proposed regulations concerning salary-reduction plans which are to be withdrawn under the bill. There is also to be absolutely no inference that if Congress does

not act in this area within a year that it would or would not be appropriate to reissue these regulations, or that it would or would not be appropriate to extend the principles thereof to cover cash or deferred profit-sharing plans or cafteria style plans.

Designated contributions.—Under present law, contributions which are designated as employee contributions are generally treated as employee contributions for purposes of the Federal tax law. For example, this is the case with respect to employee contributions under the Federal Civil Service plan. Your committee's bill contains a provision to clarify this rule for the future. This provision provides that amounts that are contributed to a qualified plan are not to be treated as an employer contribution if they are designated as employee contributions.

This provision gives effect to the source of the contributions, as designated in the plan. For example, if the appropriate committees of the Congress were to report legislation regarding employee contributions under the Federal Civil Service plan so that the present employee's contributions would become employer contributions under the Federal Civil Service plan (and that legislation were to be enacted), then those contributions would constitute employer contributions to the plan, which would be excludable from the employee's income when made. The same rule would apply to State and local governmental plans which now designate contributions as employee contributions, if the appropriate governmental bodies change the provisions of their plans.

However, some State and local government plans designate certain amounts as being employee contributions even though statutes authorize or require the relevant governmental units or agencies to "pick up" some or all of what would otherwise be the employee's contribution. In other words, the governmental unit pays all or part of th employee's contribution but does not withhold this amount from the employee's salary. In this situation the portion of the contribution which is "picked up" by the government is, in substance, an employer contribution for purposes of Federal tax law, notwithstanding the fact that for certain purposes of State law the contribution may be designated as an employee contribution. Accordingly, the bill provides in the case of a government pick-up plan, that the portion of the contribution which is paid by the government, with no withholding from the employee's salary, will be treated as an employer contribution under the tax law.

Effective date

The provisions dealing with salary reduction plans and treatment of contributions designated as employee contributions are to take effect upon enactment.

Revenue effect

There is no revenue effect from these provisions since they are consistent with present law, in the case of designated contributions, and simply postpone for one year any possible reinterpretation of present law in the case of salary reduction plans.

G. Lump Sum Distributions

(Sec. 2004 of the bill and secs. 72, 402, and 403 of the code)

Present law

Retirement benefits generally are taxed under the annuity rules (sec. 72) as ordinary income when the amounts are distributed, to the extent they do not represent a recovery of the amounts contributed by the employee. However, an exception to this general rule under the law in effect before the Tax Reform Act of 1969 provided that if an employee's total accrued benefits were distributed or paid in a lump-sum distribution from a qualified plan within one taxable year on account of death or other separation from service (or death after separation from service), the taxable portion of the payment was treated as a long-term capital gain, rather than as ordinary income.

The capital gains treatment accorded these lump-sum distributions allowed employees to receive substantial amounts of deferred compensation at more favorable tax rates than compensation received currently. The more significant benefits under this treatment apparently accrued to taxpayers with adjusted gross incomes in excess of $50,000, particularly in view of the fact that a number of lump-sum distributions of over $800,000 have been made.

To correct this problem, the Tax Reform Act of 1969 provided that part of a lump sum distribution received from a qualified employee's trust within one taxable year on account of death or other separation from service (or death after separation from service) is to be given ordinary income treatment, instead of the capital gains treatment it had been given under prior law. Insofar as the distributions are considered as being attributable to post-1969 years, the portions of the benefits which represented employer contributions were accorded ordinary income treatment while the portions which represented appreciation, interest, or dividends on the amounts accumulated continued to be given capital gains treatment. Of course, no tax was imposed with respect to the employee's own contribution. The use of capital gains treatment was continued for the entire taxable portion attributed to 1969 and earlier years.

The 1969 Act provided a special seven-year "forward" averaging treatment for the portion of the lump-sum distribution treated as ordinary income. A regular employee (or his beneficiary) is eligible for this seven-year averaging treatment if he has been a participant in the plan for five or more taxable years or if his beneficiary received the lump-sum distribution because of death.

In the case of retirement plans for the self-employed ("H.R. 10 plans", the Self-Employed Individuals Tax Retirement Act of 1962) the entire lump-sum distribution (excluding the employee contributions) are taxed as ordinary income, but with five-year forward averaging.[1] No change was made in this provision by the Tax Reform Act of 1969.

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[1] The self-employed are eligible for this special averaging if the lump-sum distributions are received on account of death, disability or if received after age 59½. As with regular employees, the distributions must also be received within one taxable year, and only if the self-employed person had been a plan participant for five or more taxable years preceding the taxable year of the distribution. However, unlike regular employees, the self-employed are not entitled, under present law, to the special averaging simply because of a separation from service.

Self-employed who elect to be taxed under this special averaging rule cannot for the same taxable year use the regular income averaging rules (sec. 1301 *et seq.*) as to this income or other ordinary or capital gain. However, the self-employed generally find this special averaging more advantageous than the regular five-year averaging rule generally available because the latter may be used only to the extent that the income averaged exceeds 120 percent of that taxpayer's average income in the four prior years. Unlike the self-employed, however, the regular employee may use his special seven-year averaging for the ordinary income portion of his lump-sum distribution while using the regular averaging provisions for the capital gain portion of the distribution as well as for any other income he may have.

Reasons for change

The Treasury has had great difficulty in formulating regulations to carry out the 1969 Act provisions for regular employees in determining the precise break-down between ordinary income and capital gain in a lump-sum distribution. It has also had great difficulty in formulating regulations to carry out the 1969 Act provisions for determining the amount of tax imposed on account of the "ordinary income" element of post-1969 lump-sum distributions. Recently, the Treasury withdrew its earlier proposed regulations on the second point and substituted new ones which, in general, would produce lower tax liabilities than those determined under the earlier set of proposed regulations. The new regulations also would produce lower tax liabilities than under current long-term capital gain rates in many cases, and this could mean that they would result in revenue losses, rather than revenue gains, in comparison to the law which would have applied in the absence of any special action with respect to this provision in the Tax Reform Act of 1969.

More important, the new proposed regulations appear to share with the old proposed regulations the problem of excessive complexity. It is frequently maintained that lump-sum distributees are unable to compute their taxes, and that accountants and tax lawyers have been refusing to attempt the computations.

To eliminate undue complexity but maintain the revenue at least as high as that which would result under the proposed regulations under the 1969 Act provision, the committee chose to introduce a new and simplified method of computing the tax due on lump-sum distributions. The substance of the 1969 change in the tax treatment would be preserved, however. Under the bill, all pre-1974 portions of lump-sum distribution would be taxed as capital gain, rather than as ordinary income. The effect of the January 1, 1974, cutoff date under this bill is to provide long-term capital gains treatment for that portion of future distributions that relates to years after 1969 and before 1974; under the 1969 Act, portions of the distributions allocable to those years would have been taxed as ordinary income.

Under the simplified computational rules, ordinary income portions of lump-sum distributions from qualified plans are to continue to benefit from special "forward" averaging. The portion of the distribution representing pre-1974 value is to receive capital gains treatment, as

stated above. The portion of the distribution attributable to post-1973 value in excess of the employee contributions is to be subject to tax as though it were ordinary income of the taxpayer, but his only income, and with 10-year averaging.

This ordinary income treatment for the post-1973 value of the lump-sum distribution is computed completely separately from the taxpayer's other income. This separate computation is used because it was found that taxpayers were, in effect, being treated quite differently depending upon the presence or absence of other income in the year of distribution—something which they sometimes had in their power to control.

The 10-year averaging is provided in order to give roughly the equivalent of what the tax would be were the individual to live 10 years after retirement and receive his interest in the plan over that period. In this case, a tax is completed on $\frac{1}{10}$th of the distribution computed as if the taxpayer had no other income or deductions. After the tax is computed, the result is multiplied by 10, and this amount is then added to the employee's tax liability on his other income. His tax liability on this other income takes into account not only his tax on wages, salary, or investment income, etc., but also the capital gains tax on the portion of the lump-sum distribution attributable to pre-1974 value. The tax liability on this other income does not in any way, however, take into account the portion of the lump sum distribution treated as ordinary income.

In making the ordinary income computation on the post-1973 value, a special minimum distribution allowance is provided to insure that the tax on relatively small lump-sum distributions will generally be not more than it would be under present law. This allowance is phased out for lump-sum distributions over $20,000.

A major problem with the rule arrived at under the 1969 Act was the difficulty in determining the value of the distribution attributable to years before 1970 for which capital gains treatment was continued by that Act. To meet that problem, the committee bill provides that where a lump-sum distribution relates to active participation which began before 1974 and ended after that time, the distribution is to be apportioned between the pre-1974 participation (eligible for capital gains treatment) and post-1973 participation (treated as ordinary income under a separate 10-year averaging computation) on the basis of the amount of time in which the employee was an active participant in each period. This method will significantly simplify the computation previously required.

Table 1 presents a comparison showing the average effective tax rates applicable for taxpayers in various situations and with various amounts of lump-sum distributions, with the methods of computing post-1973 taxable value as capital gain, under present law (with the proposed regulations), and under the committee bill.

TABLE 1.—COMPARISON OF INCOME TAX TREATMENT OF LUMP SUM DISTRIBUTIONS UNDER THE COMMITTEE BILL WITH CAPITAL GAINS TREATMENT AND WITH THE TREATMENT PROVIDED IN 1969 (AS SHOWN BY PROPOSED REGULATIONS)

		Average effective income tax rates (percent)		
Assumed adjusted gross income, other than lump-sum distribution [1]	Assumed lump-sum distribution [2]	Capital gains treatment (1973 law) [3]	1969 treatment as shown by proposed regulations [4]	Rates which apply under Ways and Means Committee bill when all but employee contributions are ordinary income
$5,000	$2,500	7.4	5.1	7.0
	5,000	7.7	5.3	7.0
	10,000	7.4	5.6	7.0
	50,000	8.5	10.6	16.3
	60,000	8.7	11.3	17.8
	100,000	10.5	13.2	20.9
$10,000	5,000	8.1	5.7	7.0
	10,000	9.2	5.9	7.0
	20,000	9.5	8.9	7.3
	50,000	10.4	12.0	16.3
	100,000	12.2	15.4	20.9
	200,000	15.8	19.5	26.2
$25,000	12,500	15.6	11.5	7.1
	25,000	15.7	13.9	9.7
	50,000	16.7	16.1	16.3
	125,000	18.8	20.0	22.2
	250,000	22.3	23.2	28.8
	500,000	25.6	27.2	40.4
$50,000	25,000	24.6	19.6	9.7
	50,000	24.8	21.0	16.3
	100,000	25.5	22.2	20.9
	250,000	27.0	25.2	28.8
	500,000	29.1	28.4	40.4
	1,000,000	31.2	32.5	53.1
$100,000	50,000	25.0	30.1	16.3
	100,000	28.2	31.4	20.9
	200,000	30.7	33.8	26.2
	500,000	32.0	37.0	40.4
	1,000,000	33.8	38.8	53.1
	2,000,000	35.1	43.9	61.5

[1] Income other than lump-sum distributions consists of income taxed at ordinary rates and which is not subject to either the maximum tax on earned income or the minimum tax on items of tax preference. To avoid problems of maximum tax on earned income, ordinary income in excess of $50,000 is considered as coming from sources other than earnings. Taxable income is computed from AGI by deducting the larger of the standard deduction or itemized deductions equivalent to 15 percent of AGI and from personal exemptions of $750 each. Taxpayer is considered to be married and filing a joint return. No additional itemized deductions are considered to accrue to the taxpayer due to the receipt of lump-sum distribution.

[2] Net of taxpayer's basis.

[3] 50 percent inclusion of capital gains in AGI. Taxpayer is eligible for either alternative tax of 25 percent on 1st $50,000 of capital gains or normal 5-year income averaging. Four prior year base period income is assumed to be the same as taxable income excluding distribution for the current year, except for $5,000 AGI class which is assumed to have a base of $1,462.50 and the $10,000 AGI class which is assumed to have a base of $5,850.

[4] 70 percent of distribution assumed to be capital gains; 30 percent ordinary income.

The committee concluded that in the interest of simplification it was desirable to provide the same averaging treatment for lump-sum distributions for both the self-employed and the regular employees. As a result, the distinction of present law that accords 5-year averaging to distributions to self-employed and 7-year averaging to distributions to regular employees is eliminated and the 10-year averaging treatment referred to above is made available in both cases.

Under the committee bill, the portion of eligible distributions attributable to pre-1974 value is to be taxed as capital gain to the self-employed in the same manner as in the case of regular employees. Also in both cases, the bill will allocate distributions between capital gain and ordinary income on the basis of the portion of the time the employee was a participant prior to 1974 and after 1973.

Many of the requirements for lump-sum treatment are the same under present law for regular employees and the self-employed.[2] However, there also are differences in present law in granting eligibility for lump-sum treatment in the case of regular employees and the self-employed, and because of basic differences in their status it was necessary to retain some of them. One difference is that regular employees may claim the special averaging treatment if the distribution is on account of their separation from service, whereas the self-employed cannot. It was necessary to maintain this distinction because there is no comparable concept of "separation from service" for the self-employed.

On the other hand, the committee bill does remove a difference in treatment between the self-employed and regular employees by permitting the latter, as well as the self-employed, the right to claim the special averaging treatment in instances of distributions to those who have attained age 59½ whether or not there is a separation from service. However, both classes of persons are to be eligible for this special treatment only once after attaining age 59½.[3]

The committee bill also removes another difference in treatment between these two classes of persons by providing that the self-employed, as well as regular employees, may claim the normal five-year averaging (provided under sec. 1301 of the code) for their other taxable income, including any capital gain portions of their lump-sum distributions. (The regular five-year averaging rule is provided under present law for cases in which taxable income in any taxable year increases markedly from taxable income in prior years).

Explanation of provisions

Under the simplified computation of the tax on lump-sum distributions, the post-1973 portion of a distribution is to be taxed as ordinary income (but with 10-year "forward" averaging), thus maintaining the recognition in the Tax Reform Act of 1969 that the taxable portions of these distributions are basically deferred compensation, and generally should be taxed as is other compensation; that is, as ordinary income. Ten-year averaging is provided to recognize the fact that the distribution represents compensation which generally is received spread out over the taxpayer's life beginning with the time he retires. Ten-year averaging, insofar as the size of the tax is concerned, achieves this result. It is believed that it would be unfair to use the high tax rate that would be applicable if the distribution were treated as received wholly in one year. As a result of the averaging, the distribution would be taxed roughly as if it were received in 10 equal parts in 10 years. The decision to tax this income separately from all other income (to the extent it is not treated as pre-1974 income eligible for capital gains treatment) was made on the basis that most distributees

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[2] In the case of both regular employees and the self-employed, in order to qualify for the ten-year averaging, the entire distribution made to them must be made within one taxable year and they must have been participants in the plan for at least five years prior to the year in which the distribution was made. This latter rule does not apply to distributions made in the event of death.

[3] The special averaging will continue to be made available to distributions on account of the disability of a self-employed person (in general if the disability is an impairment which would result in death or can be expected to be of long-continuing and indefinite duration). Regular employees may claim the special averaging for distributions on account of disability only if the disabled employee has attained age 59½ or is separated from service, as, for example, on account of the disability.

will have little or no other taxable income in the years following their retirement.

The decision to use 10-year averaging is attributable to the fact that 10 years represents the approximate life expectancy of a person age 65 and therefore is approximately the period over which the income would be spread if not received in the form of a lump-sum distribution.

The portion of the distribution attributable to pre-1974 service is to be taxed as capital gain and taxed along with any other income the taxpayer may receive. For this income, the committee believed it was appropriate to preserve the pre-1969 treatment (at current capital gains rates) to the fullest extent possible. The portion which constitutes a return of employee contributions continues to be nontaxable as a return of basis.

Under the computation, the capital gain portion is included in the amount of the taxable distribution prior to the deduction of the minimum distribution allowance and the application of the 10-year averaging rule. After a total tax is determined under the 10-year averaging rule, the tax on the ordinary income element is the portion of that total tax determined according to that portion of the plan participant's total time in the plan that was spent after 1973. The capital gain is added to the taxpayer's other income and this total (minus regular deductions, exclusions, etc.) is taxed under usual rules. (See the examples at the end of this section.)

A further simplification from prior law in the computation is the determination of the amounts to be attributed to pre-1974 employment (capital gain taxation) and to post-1973 employment (10-year averaging with ordinary income taxation). That attribution is to be made on the basis of the amount of time in which the distributee was an active participant in each period. Thus, if a distributee was an active participant from January 1, 1971, through December 31, 1980, three-tenths of the taxable portion of his distribution would be taxed as capital gain while seven-tenths would be taxed as ordinary income and averaged over 10 years.

Although the breakdown between capital gain and ordinary income is normally to be made on the basis of the number of calendar years in which the participant was active in the plan before and after December 31, 1973, the Secretary is authorized to issue regulations describing circumstances under which participants may use plan years instead of calendar years. This is intended to further simplify the computation for those plan participants whose information concerning their participation is prepared and given them by plan administrators in terms of plan years, rather than calendar years.

In order to treat all distributees equally, all computations of the tax on the ten-year averaging ordinary income portion are to be made on the basis of the tax schedule for unmarried individuals.[4] In addi-

[4] Distributees, in computing the tax on their other income (including the capital gain element of the distribution), may use any appropriate tax schedule. They are not restricted to the schedule for unmarried individuals.

tion, community property laws are generally to be ignored for these purposes.[5]

In computing the tax on the ordinary income element, a special minimum distribution allowance is to be provided to give assurance that the tax on relatively small lump-sum distributions will not be appreciably more than under present law. In the computation, the amount of the taxable distribution (the total distribution less the participant's payments) is to be reduced by the minimum distribution allowance before the tax is computed. The allowance is half of the distribution up to $20,000. Above that level, it is phased out on a $1.00 for $5.00 basis, with the result that it is entirely eliminated for distributions of $70,000 or more.

Of course, no change is made respective to the $5,000 exclusion from gross income provided in section 101(b) of the Code for amounts paid by employers because of the death of the employee.

To protect against tax avoidance possibilities the bill provides that distributions made during the current taxable year and the five previous taxable years of the recipient are to be included in the ten-year averaging computation for purposes of determining the tax rate on the last distribution. When the total tax is determined, however, the amount of this tax attributable to any earlier distributions (determined as illustrated in the examples following this discussion) is to be subtracted and the tax on the final distribution is the remainder. Generally all distributions made within the current and five prior taxable years to the same recipient are to be subject to this five-year lookback rule. Lump-sum distributions made prior to 1974 need not be aggregated under this rule.

Aggregation of distributions for this purpose is required of all lump-sum distributions in the current and five prior years with respect to the same recipient.[6] In the case of receipt of subsequent distributions by the plan participant in the six-year period, this would mean the aggregation by the participant of all those distributions would be required. In the case of a plan participant receiving a distribution from his or her own retirement plan and also receiving a distribution as a beneficiary, those distributions would also have to be included in the aggregation. Moreover, it is not intended that a recipient of one distribution could escape the inclusion of another distribution he is entitled to claim by directing that it be made instead to a beneficiary.

Aggregation is required only of lump-sum distributions. If a recipent is entitled to special averaging for a distribution, but does not elect the special averaging, he is not required to aggregate that distribution with a subsequent lump-sum distribution for which he does

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[5] Prior to the computation of the separate tax on the ordinary income portion of the distribution, under the committee bill an amount must be subtracted from the income of the retiree. In community property states, the amount subtracted will, of course, generally be only one-half of the ordinary income portion of the lump-sum distribution. The other half of this lump-sum distribution must be subtracted from the income of the spouse which may be reported on a separate tax return. After the computation of the separate tax with respect to the ordinary income portion, this tax is added to the tax of the retiree alone as otherwise computed, and not to that of the spouse where she is computing her tax on a separate return. The capital gain portion of the lump-sum distribution in a community property state is to continue as under present law to be included one-half in the income of the retiree and one-half in the income of the spouse.

[6] Requiring aggregation of all lump-sum distributions with respect to the same participant, rather than with respect to the same recipient, was rejected because of the difficulty recipients would have in determining the amount of previous lump-sum distributions to different recipients, as well as the tax paid by those earlier recipients.

elect the special averaging since the former distribution is excluded from the definition of a lump-sum distribution.

The distribution of an annuity contract is to be taken into account in the taxation of lump-sum distributions although the contract itself is not to be treated as a taxable lump-sum distribution. If an annuity is distributed to a recipient in the same six-taxable-year period in which a lump-sum distribution that is not an annuity distribution is made to the same recipient, the value of the annuity (only for purposes of computing the tax on other lump-sum distributions) is to be added to the amount of cash or value of the other property distributed and a tax is to be calculated on the sum. From that amount is to be subtracted the tax calculated on the value of the annuity alone (reduced by the minimum distribution allowance applicable to the total). The remainder is the tax on the taxable portion of the aggregated lump-sum distribution.[7] The value of the annuity, for these purposes, is to be the present value of the payments anticipated under the annuity contract, computed with regard to the life expectancy of the recipient.

The effect of treating annuity distributions as lump-sum distributions is only to increase the tax rate payable on the taxable distribution.

Annuity distributions, standing alone, remain nontaxable, as under present law. Furthermore, their inclusion in the computation is not to increase the capital gains tax payable on account of pre-1974 value of the aggregated distributions.

Of course, trusteed annuities, the rights to which have not been distributed, are not to be included in the lookback rule computation.

The committee bill does not change the present tax treatment of distributions of employer securities. Therefore, appreciation of the value of employer securities between the time the securities were allocated to the participant's account and the time of the distribution would not be taxed upon the distribution, but would be taxed as capital gains upon an eventual sale of those securities by the recipient. (This rule would continue to apply regardless of whether the employee has completed five years of participation in the plan.) This appreciation, unlike distributions of annuity contracts, would not be included in the aggregated distributions for purposes of the tax computation.

A recipient of a distribution could not use this special ten-year-averaging method unless he combines all amounts received in any taxable year that might be eligible for this special averaging system into a single lump-sum distribution. For example, if an employee has been working for separate employers at any time during his working career and receives in one taxable year distributions from two or more employers of the entire amounts (or, in the case of an annuity purchase, is credited with the entire amount) due him under the plans of those particular employers, that employee must treat all the distributions to him in that year as a single lump-sum distribution in order to claim the ten-year averaging.

For a distribution to be eligible for the special lump-sum distribution treatment an employer must distribute to an employee (or, in the case of an annuity, distribute to that employee's credit) all of the bal-

[7] If the distribution of an annuity is the final lump-sum distribution in any six-taxable-year period, a tax is determined based on the tax rate applicable to the total of the aggregated distributions, including the annuity distributions. The tax deemed payable on account of the annuity distributions is subtracted, as above described, a credit is given for the tax earlier paid on account of the cash distributions, and the remainder is the tax due for the final taxable year in the six-year period on account of the distributions. Of course, this does not increase the basis of annuity contract.

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ance due the employee from all the employer's pension plans, all the balance from that employer's profit-sharing plans, or all the balance from that employer's stock bonus plans. This prevents the tax avoidance which would otherwise occur as the result of successive distributions in subsequent years from different plans of the same employer.

Although the number of separate distributions is limited as described above, elections to use this special ten-year averaging may be made freely for all permitted lump-sum distributions until the employee has attained age 59½. After that time, only one election may be made with respect to that employee. This would permit a widow to make an election for the special averaging for a distribution on account of her deceased husband while making another election in a subsequent year for her own retirement distribution although both she and her husband had attained age 59½ at the time of the distributions. However, an employee who receives a lump-sum distribution on his own account after age 59½ and elects the special averaging treatment may not thereafter make the same election for another distribution on his own account in another taxable year. The effect of this is to prevent most retiring taxpayers from avoiding the aggregation required under the five-year rule by electing the special averaging for years that are six or more years apart.

Despite the limitation of one election with respect to individuals who have attained age 59½, if such an individual makes an election to use ten-year averaging for one distribution, and then later receives an annuity distribution within the six-year aggregation period, the annuity and the prior distribution (or distributions) must be aggregated.

It is contemplated that a taxpayer will make his election on the income tax return for the taxable year in which the distribution was made. The election, however, is not to be irrevocable, and can be changed so long as the income tax return could be amended or a refund claim could be filed. (Normally, a refund claim must be filed within three years after the return is filed.)

Individuals, estates and certain trusts may elect to use this special lump-sum distribution treatment.[8] Of course, the normal constructive receipt and anticipatory assignment of income rules would be applicable to distributions to trusts, as under present law. Thus, if a lump-sum distribution is made to a nontestamentary trust having a beneficiary other than the employee as the primary beneficiary, the distribution would generally be taxable to that employee.

As a result of this and the specific language of the bill, an individual could not avoid the aggregation rules by making distributions to multiple trusts for the benefit of the same beneficiary. Similarly, the aggregation rule could not be avoided by reciprocal trusts.

A trust would not be permitted to make the election, and thereby claim the special averaging treatment, if its use has affected the includibility of the distribution in the gross estate of the employee for purposes of that employee's estate tax. However, the fact alone that the amount of a distribution is excluded under section 2039(c) of the Code does not bar the trust from making the election unless the use of the trust as a medium, whether intentionally or unintentionally, occasions estate tax avoidance.

[8] However, an estate or a trust will be prohibited from making the election if an election has already been made—by another trust or by the individual himself—with respect to that same individual after he has attained age 59½.

The plan participant would be treated as the recipient of a distribution, for purposes of the aggregation rules, if he causes a lump-sum distribution to be made to a trust for the benefit of his wife, but with the income or right to the income reserved to himself, or in any other situation in which the participant would be treated as the substantial owner of the trust under the present tax rules, even if the grantor of the trust is the employer or plan.

The tax paid on a lump-sum distribution under this special averaging treatment rule is neither to be a tax preference item (in the sense of section 56 of the Code), nor is it to be used as a part of the tax paid that reduces the minimum tax on tax preference items.

First example.—On December 31, 1975, A terminates his services and receives a lump sum distribution of $65,000 from a qualified plan. The distribution includes employer securities with a fair market value of $25,000 and a basis of $10,000. A has been participating in the plan since January 1, 1966. The plan is noncontributory. A is married; both A and his wife are 50. Their only other income is A's salary of $15,000 and his salary from a second job ($5,000). Their itemized deductions are $3,000. Their average base period income from the preceding four years (1971 through 1974) is $14,000.

The tax on the portion of the distribution which is not treated as a long-term capital gain is computed as follows:

Net distribution ($65,000 total distribution less $15,000 unrealized appreciation on employer securities)	$50,000
Less: Minimum distribution allowance: 50 percent of first $20,000	10,000
Reduced by: 20 percent of net distribution in excess of $20,000	6,000
	4,000
Distribution less allowance	46,000

The tax on $1/10$th of the distribution less allowance computed from the tax rate schedule for single taxpayers is $816.00.

Multiply this amount by 10: $8,160.00.

Then, multiply by the fraction,

$$\frac{\text{Years of participation in plan after 1973}}{\text{Total years of participation}} = \frac{2}{10}\,0.2$$

which yields $1,632.00.

Thus, the tax on the ordinary income portion of the distribution is $1,632.00.

The amount of the distribution taxed as a long-term capital gain is the amount of the net distribution multiplied by the fraction,

$$\frac{\text{Years of participation before 1974}}{\text{Total years of participation}} = \frac{8}{10}\,0.8$$

Net distribution	$50,000
Capital gains element	40,000

The capital gains element is taxed along with other income (exclusive of the ordinary income element) in the normal way. The tax on the taxable income of $35,500 ($15,000 salary from first job, plus $5,000 from second job, plus $40,000 capital gains element of lump sum distribution, less $20,000 capital gains exclusion, less $3,000 item-

ized deductions, less two $750 personal exemptions) is calculated using the tax rate schedule for married taxpayers filing joint returns. In this case the alternative tax on capital gains is not available, but the regular-five-year income averaging provisions are.

Ordinary tax	$10,130.00
Tax—Using regular income averaging [1]	8,828.00

[1] As indicated above, average base period income is $14,000.

Selecting the tax computation method which yields the smallest amount of tax, A uses the regular five-year income averaging method and has a tax of $8,828.00.

Finally, A combines the tax on the capital gains portion of the distribution and his salary, with the tax on the ordinary income portion of the distribution:

Tax on salary and capital gains portion of distribution	$8,828.00
Tax on ordinary income portion of distribution	1,632.00
Total 1975 income tax	10,460.00

A's basis in the employer's securities is $10,000.

Second example.—On December 31, 1976, A receives a distribution from a qualified plan with respect to his second job. In this case the distribution is a nontransferable annuity contract, the value of which is $6,000; and a cash distribution of $4,000 financed solely by the employer. A had participated in the plan since January 1, 1967. Mr. and Mrs. A's only other income in 1976 is A's salary of $25,000 and interest of $3,000 on the $40,000 cash received in the prior lump sum distribution. They have itemized deductions of $2,100. Mr. and Mrs. A's 1976 tax is computed as follows:

First, compute the tax on the portion of the distribution which is not treated as a long-term capital gain and which is taxed separately.

Step 1:

1976 cash distribution	$4,000
1976 annuity contract	6,000
Prior year net distribution	50,000
Total	60,000
Less: Minimum distribution allowance: 50 percent of first $20,000	$10,000
Reduced by: 20 percent of net distribution in excess of $20,000	8,000
Total	2,000
	58,000

Ten times the tax on one-tenth of $58,000 (from the rate schedule for single taxpayers) is $10,680.

Step 2:

1976 annuity	$6,000
Minimum distribution allowance from Step No. 1	2,000
Total	4,000

Ten times the tax on one-tenth of $4,000 (from the rate schedule for single taxpayers) is $560.00.

Step 3: $10,680.00−$560.00=$10,120.

Step 4:

Determine ordinary income and capital gains elements of A's distribution and his prior year distribution. The ordinary income element of A's latest distribution is determined by multiplying the cash distribution of $4,000 by:

$$\frac{\text{Years of participation in plan after 1973}}{\text{Total years of participation}}=\frac{3}{10}=0.3$$

Thus, A's ordinary income element is $1,200. $10,000 of Mr. A's prior distribution of $50,000 was ordinary income.

Thus, the tax on the ordinary income element is the fraction of the tax from Step No. 3 which the ordinary income elements of the 1976 and prior year distributions bear to the entire distributions.

$$\left.\frac{\$1,200+\$10,000}{\$4,000+\$50,000}\right\}\times\$10,120=\$2,098.96$$

Step 5:

The tax on the ordinary income element of A's 1975 distribution from their 1973 income tax income return was $1,632.00. Subtracting that from the tax calculated in Step No. 4 yields the tax on the ordinary income element of A's latest distribution:

$$\$2,098.96-\$1,632.00=\$466.96$$

Second, compute the tax on all other income, including the capital gains portion of the distribution.

Step 6:

In Step No. 4, the ordinary income element of the distribution was calculated as $1,200. Therefore, the long-term capital gains element is:

$$\$4,000.00-\$1,200.00=\$2,800.00$$

Step 7:

The capital gains element is taxed along with other income in the ordinary manner.

Capital gains element	$2, 800
Less: 50 percent of net long-term capital gain	1, 400
Total	1, 400
Salary	25, 000
Interest	3, 000
Adjusted gross income	29, 400
Less: Itemized deductions	2, 100
Less: Personal exemptions (2×$750)	1, 500
Taxable income	25, 800

The tax on $25,800 is calculated using the tax rate schedule for married taxpayers filing joint returns. In this case, neither the alternative tax on capital gains nor the regular five-year income averaging provision is available.

Ordinary tax	$6, 308. 00

Third, A combines the tax on the capital gains portion of the distribution and his other income, with the tax on the ordinary income portion of the distribution.

Step 8:

Tax on capital gains portion of distribution and on other income	$6,308.00
Tax on ordinary income portion of distribution	466.96
Total 1976 income tax	6,774.96

If in the examples above, A has attained age 59½, he may elect to treat only one of the distributions as a lump sum distribution qualifying for ten-year averaging. In computing the tax liability on the distribution which he elects to qualify for ten-year averaging, A will not aggregate any distribution (except in the case of a distribution of an annuity contract) made after attaining age 59½ which is not treated as a lump sum distribution for purposes of the ten-year averaging.

Effective date

These lump-sum distribution provisions are to apply to distributions made in taxable years beginning after December 31, 1973. The aggregation required under the five-year lookback rule is not to include distributions made prior to that effective date.

Revenue effect

The revised tax treatment of lump-sum distributions from retirement plans is expected to result in the long run in annual revenue gains amounting to $60 million a year based on 1973 levels of income.

H. Miscellaneous

1. REGISTRATION WITH SOCIAL SECURITY

General reasons for change

The mobility of labor in the United States has been steadily increasing. From the standpoint of the economy, this is generally viewed as a desirable factor since it enables us to overcome labor shortages in limited areas or specific industries. It also tends to decrease frictional unemployment. However, those employees who move from job to job have had difficulty in earning vested retirement benefits, and even where these benefits are earned, they have faced difficulties in collecting the benefits upon retirement.

Your committee understands that, upon retirement, employees who frequently changed employment during their working years may have difficult problems in locating their former employers and the retirement plans in which they may have vested benefits. At times, this results from their former employers (or the plans) having changed name or address, or having merged with other organizations. At other times, the employees themselves may not have been able to maintain the records needed to enable them to contact their former employers. Alternatively, they may have forgotten that they had vested rights in plans with former employers.

To resolve this problem, the bill provides that the Social Security Administration is to maintain records of the retirement plans in which individuals have vested benefits, and is to provide this information to plan beneficiaries.[1]

[1] The bill also provides for a tax-free transfer of funds between a qualified plan and individual retirement accounts, which should meet any additional need for "portability".

Explanation of provisions

Under the bill, the administrator of every funded plan of deferred compensation (except for nonqualified governmental plans and nonqualified church plans) is to file an annual statement with the Secretary of the Treasury regarding individuals who have a right to a deferred vested benefit under the plan and who, during the year, separated from service covered by the plan. The Secretary of the Treasury is to provide this information to the Secretary of Health, Education, and Welfare; in this way it is contemplated that the plan administrator can file this statement together with other annual returns for the plan filed with the Secretary of the Treasury. (It is also contemplated that similar registration requirements will be established under the Labor Department. Consequently, to avoid the problem of duplicate reports, the bill provides that regulations issued by the Secretary of the Treasury respecting this provision will not be effective for plan years beginning after 1975. Your committee expects that the Secretary of the Treasury also will approve regulations issued by the Secretary of Labor.)

The annual statement is to include the name of the plan, the name and address of the plan administrator, and the name and taxpayer identifying number (generally the Social Security number) of every individual who has separated from service covered by the plan in the plan year for which the statement is filed and who is entitled to a deferred vested benefit under the plan. The statement also is to include information on the nature, amount and form of the individual's deferred vested benefit as of the time he left employment. In addition, the statement is to include other information required by the Secretary of the Treasury. However, the statement need not include information about persons who separated from service if they were paid retirement benefits, such as annuities, from the plan during the year of separation. In addition, each covered plan is to notify the Secretary of the Treasury of any change of name of the plan or change of name or address of the plan administrator, any plan termination, or any plan division or merger or consolidation with any other plan.

The plan administrator also is to furnish each individual included in the annual registration statement with the information in that statement regarding his plan rights. In addition, the plan administrator is to furnish satisfactory evidence to the Secretary of the Treasury, upon filing the annual registration statement, that he has furnished individual plan participants with a statement of their rights under the plan. It is expected that a declaration under penalty of perjury of delivery or mailing to each named individual will ordinarily be sufficient evidence.

With respect to multiemployer plans, it may be difficult for plan administrators to determine when a plan participant has separated from service. Consequently, the Secretary of the Treasury is to establish regulations providing for annual registration statements by multiemployer plans.

Upon the request of the plan participant (and in accordance with regulations), the Social Security Administration will furnish him any information which it has relating to his vested retirement plan benefits. In addition, when a person applies for Social Security retirement, disability, death, or hospital insurance benefits, on determining whether these benefits are due, the Social Security Administration will

also inform the claimant of any information which it has relating to the vested retirement plan benefits of the participant. The Social Security Administration is not to attempt to verify the accuracy of the information it receives with respect to plan rights, nor to determine the present value or status of any plan rights, but is only to report the information that it receives and records.

Your committee understands that the value of plan rights will often change between the time that a report is made and the time a participant (or his beneficiaries) are informed of their rights by the Social Security Administration. However, your committee believes it is important for a plan to go on record as to these rights as of the time of separation from service. Additionally, it is expected that the Social Security Administration will make it quite clear, at the time it informs applicants of their rights, that the information given is what was received from the plan and that changes in rights may have occurred after the time the information was received from the plan.

In order that persons who have left employment with vested rights before the effective date of this provision may benefit from the provision, the bill provides that the Secretary of the Treasury also may, pursuant to regulations, receive reports from covered plans relating to the deferred vested retirement benefits of any plan participant who has terminated his employment with the employer in plan years before the effective date of the provision. These reports would be filed by plan administrators on a voluntary basis.

If a plan administrator fails to file the annual registration statement, he is to be subject to a penalty of $1 per day for each participant with respect to whom there has been a failure to file; the maximum penalty is $5,000 per plan year. However, plan administrators will not be subject to the penalty upon failure to file due to reasonable cause. A penalty also is to be imposed on a plan administrator who does not file with respect to changes in plan status. The penalty is to be $1 per day, up to a maximum of $1,000; however, no penalty will be owed if failure to file was due to reasonable cause.

If a plan administrator willfully furnishes a false or fraudulent statement of vested rights to individual participants or willfully fails to furnish the required statement, he will be subject to a penalty of $50 per participant.

Effective date

The provisions of the bill which require an annual registration statement with respect to persons separating from service with vested benefits (and with respect to the certificate of rights furnished to each such person) are to with respect to plan years beginning after December 31, 1975.

2. REQUIREMENTS FOR QUALIFICATION OF TRUSTS BENEFITING OWNER-EMPLOYEES

Under present law (section 401(d) of the code), if a trust provides benefits for employees some or all of whom are owner-employees, the

trust may qualify for tax benefits only if the trustee is a bank.[1] The committee believes that this provision is too restrictive, and that other entities could handle the task as well.

For that reason, the committee bill (section 1022) would permit a "person" other than a bank to be the trustee of such a trust without causing the trust's disqualification. The bank or other person performing as such a trustee must be able to satisfy the Internal Revenue Service that he will hold the trust assets in a manner consistent with the general eligibility requirements for tax qualification. Furthermore, the provision in present law allowing someone (including the employer) other than the trustee or custodian to have authority to control the investments of the plan account, whether by directing the investment policy or by exercising a veto power over investments, is retained under the committee bill.

This provision generally applies to plan years beginning after the date of enactment. However, in case of a plan in existence on the date of enactment, the provision applies to plan years beginning after December 31, 1975.

3. CUSTODIAL ACCOUNTS AND ANNUITIES

Present law permits custodial accounts to qualify for tax benefits as if they were trusts, provided that the custodian is a bank, and provided also that the custodial account meets the requirements that a trust would have to meet for qualification. Furthermore, the custodial account's assets must be invested solely in open-end mutual funds or solely in annuity, endowment, or life insurance contracts (and certain other conditions must be met) (sec. 401(f)(1)).

The committee believes that allowing entities other than banks to be custodians of custodial accounts that might be qualified would enhance competition and open the field to other types of enterprises that wish to engage in it and are suited for it. Accordingly, the committee bill permits a person other than a bank to be custodian of such a custodial account. In addition, in order to permit the participation of the insurance industry, the committee bill allows an annuity contract to be treated as a trust that is eligible for qualification, provided that the annuity contract meets the same requirements a custodial account must meet, just as it treats a custodial account as eligible for qualification. The bank or other person holding the assets of the custodial account or holding the annuity contract must satisfy the Internal Revenue Service that it will hold the assets in a manner consistent with the general eligibility requirements for tax qualification. (For example, any distributions prior to age 59½ to owner-employees would have to be reported to the Internal Revenue Service.)

Just as the bank is treated as the trustee of a qualified custodial account under present law, so also would another entity holding the assets of a qualified custodial account or holding a qualified annuity contract be treated as the trustee under the proposed amendment.

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[1] This subsection of present law, and the proposed amendment, would be inapplicable for trusts created before October 10, 1962, that did not qualify for tax benefits on October 9, 1962. Those trusts would not be entitled to use either a bank or another person as trustee of a trust benefiting owner-employees.

This provision is to take effect as of January 1, 1974.

4. SECTION 403(B) ANNUITY PLANS

Under present law, contributions to a section 403(b) plan (a plan funded by employers for the benefit of teachers or employees of tax-exempt organizations) may be invested only in insurance contracts. The committee believes that it would be desirable to provide more flexibility in this area, and, accordingly, the committee bill provides that these contributions may also be placed in qualified custodial accounts if those funds are to be invested in mutual funds. The committee bill, however, would make these custodial accounts subject to certain requirements of the code, such as those pertaining to reporting, unrelated business income, and prohibited transactions.

This provision is to take effect as of January 1, 1974.

5. REPORTING AND PUBLICATION OF RETURNS

In order that many of the new rules governing qualified plans may be enforced, new reporting and publication requirements are needed.

The bill restates present law by requiring employers (or plan administrators) who establish or maintain deferred compensation plans to file annual information returns. Also, the bill provides that the Secretary of the Treasury may provide reporting requirements with respect to the retirement savings deduction and individual retirement accounts, etc.

The bill opens to public inspection the employer's application for a determination that a plan is qualified and that the trust under the plan is exempt (including papers submitted in support of these applications). Additionally, determination letters issued by the Internal Revenue Service dealing with qualification or exemption of plans and trusts are to be open to public inspection. Annual returns with respect to qualified plans are also to be open to public inspection. However, under the bill information contained in these papers and documents from which the compensation of any participant (or other person) may be ascertained is not to be open to public inspection. (However, all other information in these documents is to be available to the public, including information such as the numbers of individuals covered and not covered in a plan, listed by compensation range.) These rules are to enable plan participants and beneficiaries to obtain the full information needed to enforce their plan rights, pursuant to the new rules established in the bill, and are also to protect the confidentiality of information regarding the financial status of specific individuals.

The bill establishes a penalty for failure to file annual returns; the penalty will be $10 for each day that a return is late, up to a maximum penalty of $5,000 for any one failure to file. However, this penalty will not be owed if failure to file is shown to be due to reasonable cause. For this purpose, your committee's intent is that a failure to provide material items of information called for on a return be treated as a failure to file a return.

The provisions of the bill making applications, determination letters and other documents open to public inspection are to go into effect for

applications filed or documents issued after December 3, 1975. The provisions of the bill requiring annual returns to be filed are to become effective for plan years beginning after the date of enactment. The provisions regarding reporting with respect to individual retirement accounts are to become effective on January 1, 1974.

6. CERTAIN PUERTO RICAN PENSION PLANS

Present law

Under present law a pension trust, to be a qualified trust under section 401 of the code, must be created or organized in the United States. Thus, a Puerto Rican pension trust which qualifies for tax exemption under the laws of Puerto Rico (13 L.P.R.A. § 3165) is not exempt from U.S. tax on its income from U.S. sources.

General reasons for change

Puerto Rican pension trusts which satisfy the requirements of the Puerto Rican tax law are unable to diversify their portfolio by investing in U.S. securities without paying U.S. income tax on the income derived from such investments since they are not able to qualify for exemption under the U.S. tax law. On the other hand, since the requirements for qualification under U.S. and Puerto Rican law are roughly comparable, a Puerto Rican pension plan is able today to establish a trust in the United States which satisfies both the U.S. and the Puerto Rican tax provisions. Since the Puerto Rican Government has established requirements in its tax law for when a trust forming part of a pension plan for participants who are residents of the Commonwealth of Puerto Rico is entitled to be treated as a qualified trust, your committee believes it is appropriate to eliminate the distinction under U.S. law as to the place of organization or creation of a trust entitled to be qualified under U.S. law, if that trust is created or organized in Puerto Rico and if the trust has satisfied the requirements for qualification under the Puerto Rican tax laws.

Explanation of provision

Your committee's bill provides that for purposes of exemption from U.S. tax under section 501(a) of the code, a trust which is part of a pension, profit-sharing, or stock bonus plan all of the participants of which are residents of the Commonwealth of Puerto Rico is to be treated as an organization described in section 401(a) of the code, if the trust forming part of the plan is exempt from income taxes (13 L.P.R.A. § 3165) under the laws of the Commonwealth of Puerto Rico.

Effective date

The provision is to be effective for taxable years beginning after December 31, 1973.

7. DEDUCTION FOR CERTAIN EMPLOYER CONTRIBUTIONS FOR SEVERANCE PAYMENTS REQUIRED BY FOREIGN LAW

Present law

Under present law contributions to a nonqualified trust are deductible (sec. 404(a)(5)) in the year in which an amount attributable to

the contribution is included in the gross income of the participant, but in the case of a plan in which there is more than one participant only if separate accounts are maintained under the plan for each participant. Generally, amounts attributable to the contribution under such a plan would be includable in a participant's income in the taxable year that the participant's rights become nonforfeitable

General reasons for change

The laws of a number of foreign countries require an employer who is engaged in a trade or business in that country to make payments to its employees at the time the employer separates from the service of the employer. This type of requirement of foreign law generally results in a plan which is in the form of a defined benefit plan and for which separate accounts are not maintained for the participants. The requirement of separate accounts for the participants as a condition of deductibility is generally necessary for employees who are subject to U.S. taxes in order that separate accounting is maintained for the amount that is required to be included in the employee's gross income.

In the case of employees who are nonresident alien employees of the employer employed in a trade or business in a foreign country, their gross income from their employment is from sources outside the United States and is not subject to U.S. tax. Accordingly, your committee has decided that the requirement of separate accounts is an unnecessary requirement in the case of nonresident alien employees who are employed in a trade or business receiving benefits required by

Explanation of provision

Your committee's bill provides that for taxable years beginning after December 31, 1973, an employer in determining for purposes of section 404(a)(5) the taxable year in which any contribution is includable in the gross income of nonresident alien employees of such employer, paragraph (5) of section 404(a) is to be applied as not requiring that separate acounts be maintained for the nonresident alien employees if three conditions are satisfied. First, the employer is engaged in trade or business in a foreign country. Second, with respect to that trade or business, the employer is required by the laws of that foreign country to make payments, based on periods of service, to its employees or their beneficiaries after the employee's death, retirement, or other separation from service. Third, the employer establishes a trust (whether organized within or outside the United States) for the purpose of funding the payments required by the foreign law. A nonresident alien individual is treated for this purpose as including an amount in gross income, even if the income is from sources outside the United States and is not subject to U.S. tax.

Effective date

This provision is to be effective for taxable years beginning after December 31, 1973.

8. STUDY OF GOVERNMENTAL PLANS

Under present law, the Civil Service Retirement System and most employee retirement plans of State and local governments are quali-

fied under the Code. It appears, however, that many governmental plans, including the Federal plan, may be unable to meet the new participation, vesting, and funding standards that would be contained in the committee bill. The committee bill, therefore, would require the committee to study the extent to which governmental plans in fact do not meet the new standards and to make recommendations as to the extent to which those plans, or some of them, should be required to conform to the new standards.

Although governmental agencies do not pay taxes, and hence would not lose any tax deductions for current employer contributions if their plans should fail to qualify, one consequence of governmental plans' ceasing to qualify would be that the employees covered by those plans would have to take into income benefits funded by employer contributions (including any increments in those benefits) as those benefits vested (become nonforfeitable), rather than later, upon distribution of the benefits. In addition, it appears uncertain whether the trust funds of nonqualifying governmental plans would be taxable on the interest and appreciation earned by the funds.

A certain consequence of a failure of a governmental plan to qualify would be that lump-sum distributions would not be eligible for the special averaging treatment permitted under certain circumstances if such distributions are made from qualified plans. In addition, the exclusion from the gross estate of the value of an annuity receivable by certain beneficiaries to the extent attributable to employer contributions would be lost if the plan were not qualified, and so also would be lost the employee's right to elect to make an annuity a joint and survivor annuity (thus making payments become payable to a beneficiary at or after the employee's death) without thereby incurring gift tax liability.

In general, the committee would seek to determine whether requiring governmental plans to adhere to the new standards (to the extent they do not already do so) would entail unacceptable cost implications to governmental entities. With regard to funding, it has been argued that governmental plans should be exempt from funding standards since the taxing power can be viewed as a practical substitute for these standards. On the other hand, there have also been reports that in the case of a number of governmental units, such generous pension promises have been made, and so little funds have been set aside currently, that the practical likelihood of imposing sufficient taxes to pay those benefits may be open to question.

The committee, in determining whether any governmental plan is adequately funded, would consider the taxing power of the particular governmental unit involved, as well as the new funding standards.

This provision (requiring the described study by the Ways and Means Committee) would take effect upon the date of enactment of the committee bill. The provision calls for the committee's recommendations stemming from the study to be submitted to the House not later than December 31, 1976.

9. RETROACTIVE REMEDIAL CHANGES TO QUALIFIED PLANS

Employers may now retroactively cure defects in employee benefit plans (which do not meet the requirements for tax qualification) by

making remedial amendments by the 15th day of the third month after the end of the taxable year of the employer in which a plan is newly established. Retroactive remedial changes however may not be made with respect to plan amendments.

The time allowed for remedial changes may be too short for a plan to be cured to qualify as of the year in which it is established. This occurs because many plans are established at the end of the year and thus only 2½ months are available to cure a plan. Additionally, plan amendments (which may be as significant as newly established plans) may not be retroactively cured. As a result of these limitations, plans may not be qualified, to the detriment of employers and employees.

The bill provides that retroactive remedial amendments may be adopted to cure a plan regardless of whether failure occurs on establishing a new plan or because of an amendment to an existing plan. The bill also extends the time to adopt a retroactive remedial amendment to the time (including extensions) for filing the employer's return for the taxable year for which the plan or amendment was adopted or put into effect, or to a later time designated by the Service. It is expected that the regulations will provide for extension for reasonable cause, such as the filing of a bona fide request for a determination by the Service that a plan or plan amendment is qualified.

This provision is to become effective on the date of enactment.

10. RULES FOR CERTAIN NEGOTIATED PLANS

Present law

Under present law, special rules are provided for contributions paid by an employer to a plan providing welfare and pension benefits if the plan was established before 1954 as a result of an agreement between a union and the Government during a period of Government operation of the major part of the productive facilities of the industry in which the employer is engaged (sec. 404(c)). Under this provision, contributions are not deductible under the deferred compensation provisions of the code but are deductible solely under section 162 as trade or business expenses. Present law also provides that this provision is to have no effect with respect to contributions to a trust on or after any date on which the trust is exempt from tax under section 501(a).

General reasons for change

This provision was enacted in recognition of the special circumstances surrounding the establishment of the United Mine Workers Welfare and Pension Plan Trust, i.e., the fact that the plan was negotiated during a period that the U.S. Government was a party to the agreement establishing the plan and was in control of a substantial number of the coal mines in the country.

It has been called to the committee's attention that changes in the coal mining industry and in the administration of the welfare and pension trust have made it desirable to establish two separate trusts—one for the payment of welfare benefits and the second for the payment of retirement benefits. Your committee believes that this is a desirable objective and that the pension trust should be allowed to satisfy the requirements for qualification of pension plans in order to obtain the

favorable tax benefits associated therewith. Of course, the plan would also have to meet the standards relating to coverage, vesting and funding provided in this bill.

Your committee is aware that a number of recent court cases have required the coverage and payment of pension benefits to individuals whose participation in a qualified pension plan would cause the pension plan to be disqualified. Accordingly, your committee believes that rules should be provided so that the pension plan may qualify without forcing the plan administrator to relitigate issues which have been resolved by the courts.

Explanation of provision

In order to facilitate the restructuring of the welfare and pension plan into two separate plans, your committee's bill provides special rules in the case of any individual who, before July 1, 1974, was a participant in the United Mine Workers Plan. First, an individual who was self-employed (within the meaning of sec. 401(c)(1)) such as a coal hauler is to be treated with respect to his service under the plan as not a self-employed individual but as an employee of a participating employer under the plan. This provision will enable the plan to meet the requirement of being a plan of an employer for the exclusive benefit of his employees with respect to certain self-employed individuals who have traditionally been covered under the plan. Second, in order to be certain that the self-employed individuals covered under the plan do not establish separate H.R. 10 plans on their own behalf, the bill provides that earnings derived from service covered by the plan are not to be treated as being earned income (within the meaning of sec. 401(c)(2)). Third, an individual who was a participant before July 1, 1974, is to be treated as an employee of a participating employer under the plan for service covered under the plan before July 1, 1975. This provision is designed to enable non-participating employers whose employees were covered under the plan to agree to become participating employers and thus maintain coverage for their employees. Of course, individuals who retire prior to July 1, 1975, are to be treated as if they were employed by a participating employer even though the employer does not agree to become a participating employer or if the employer is no longer in existence.

The bill further provides that section 277 (relating to deductions incurred by certain membership organizations in transactions with members) is not to apply to any trust described in section 404(c). This provision is added to enable the welfare trust to pay benefits to members and deduct the payments from any investment income it may have. Since questions have been raised as to the scope of section 277, your committee concluded that it could not wait until resolution of this issue because it is felt that there is great urgency for the Mine Workers to make the desired changes in their Welfare and Pension Plan. Your committee's decision is not to be construed as any indication as to the scope of section 277 and its applicability to other non-exempt trusts which may be paying similar types of benefits to its members. Similarly, it is not to be construed to furnish any indication regarding the applicability of section 277 to the United Mine Workers plan prior to the effective date of the new provision. Instead, this decision should be

viewed as a further attempt to effectuate the policy which led the Congress to enact section 404(c).

Since the desire of the United Mine Workers is to establish the pension plan as a qualified plan under section 401(a), the bill provides that section 404(c) is not to apply to the pension plan once it becomes a qualified plan except for the purpose of determining which individuals are to be treated as employees of a participating employer under the plan.

Effective date

The amendments made by this section of the bill are to apply to taxable years ending on or after June 30, 1972.

V. EFFECT ON REVENUES OF THE BILL AND VOTE OF THE COMMITTEE IN REPORTING THE BILL

In compliance with clause 7 of rule XIII of the Rules of the House of Representatives, the following statement is made relative to the effect on revenues of this bill. Apart from the revenue effect of the minimum vesting and funding provisions, the bill is expected to decrease revenues by about $460 million a year after the provisions become fully effective (approximately 3 years in the future) but at 1973 levels of income. The new minimum vesting standards could involve a revenue loss of possibly as much as $265 million a year after 1975 but probably the revenue loss will be only about half this amount. Data are not available which would make a reliable estimate as to the revenue impact of the new minimum funding requirements. It is believed, however, that the revenue effect in this case will be relatively modest. The Treasury Department agrees with this statement.

In compliance with clause 27(b) of rule XI of the Rules of the House of Representatives, the following statement is made relative to the vote by the committee on the motion to report the bill. The bill was ordered reported by a voice vote.

VI. SUPPLEMENTAL VIEWS OF HON. JAMES C. CORMAN AND HON. SAM GIBBONS

We share the hope and expectation of the other Ways and Means Committee members that H.R. 12855 will provide real protection for the pension rights of working Americans. Further, we hope this bill will place some limits on the amount of money which can be set aside for retirement, with special tax treatment, by high-income persons.

However, we would be remiss if we did not point out that this legislation is by no means the final answer to the vast array of issues relating to the pension system. In fact, there is a great and pressing need for further action in such areas as these: (1) placing additional limits on the use of pension and profit-sharing plans as tax shelters, and (2) reassessing the relation of the social security system to the private pension system and the costs and benefits of the Government roles in each one.

COSTS AND BENEFITS

Each year the Federal Government loses about $4 billion in tax revenues because of the special tax treatment which is allowed for pension, profit sharing, and related plans designed to provide Americans with retirement benefits.

These tax benefits are intended basically to induce corporations, including professional organizations, and other businesses to set up retirement plans for their employees.

However, Mr. Frederic Hickman, Assistant Secretary of the Treasury for Tax Policy, admits that pension and profit-sharing plans have in fact become "the quintessential tax shelter." He calculates that the upper 8 percent of workers (including executives) receive 50 percent of the tax benefits involved, while the bottom 50 percent of wage earners receive only 6 percent of the benefits.

Mr. Hickman also indicates that the tax shelter features of these retirement plans are particularly valuable to higher income persons, who would normally pay high rates of income tax.

Following is a chart (chart 1) that indicates how important tax benefits are in the formation of a pension.

CHART 1

Tax Subsidy Element in Pensions
(ALL IN CONSTANT DOLLARS)

IF THE EMPLOYER CONTRIBUTES 15% OF SALARY

	EXECUTIVE		EMPLOYEE	
	WITH TAX BENEFITS	WITHOUT TAX BENEFITS	WITH TAX BENEFITS	WITHOUT TAX BENEFITS
STARTING TAXABLE SALARY	$ 30,000	$ 34,500	$ 10,000	$ 11,500
ENDING TAXABLE SALARY	100,000	115,000	18,000	20,700
AFTER-TAX PENSION	25,990	12,312	8,005	5,765
"TAX SUBSIDY"	53%		28%	

Assumptions: Participation age 35 to age 65; 6% interest; 2½% inflation; joint returns; executive has outside income equal to deductions.

Prepared by the Treasury Department.

Obviously, the $4 billion a year which is lost in pension-related tax breaks must be made up by increased tax burdens on other taxpayers. It should also be noted that the coverage of pension plans extends to only something like 42 percent of the private, nonfarm work force, so that many workers receive no benefit at all from these tax losses to the Government.

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It's clear that one of the greatest reasons for excessive executive salaries is the tax avoidance which can be managed by earmarking large portions of these salaries for pension or profit-sharing plans. With some executive salaries hovering at the $100,000 to $300,000 level, it's easy to see why these executives put up such a strong resistance to any limitation on tax deductible contributions to their pension funds.

This is an area ripe for immedate remedy.

There is absolutely no justification for as generous a limit on these tax deductible contributions as is contained in H.R. 12855. No candidate for public office could possibly defend the U.S. Government for subsidizing a $75,000 a year pension for corporate executives, and we certainly should not be enacting laws that we cannot defend in public.

Unfortunately, a motion to reduce this limitation to the still-generous sum of $60,000 a year lost in committee on a rollcall vote of 14 nays to 9 yeas.

Another effect of our special tax treatment of retirement plans is to create a huge reserve of investment assets which operate outside of our tax system. The book value of these assets was $154 billion in 1972. By 1980, their value is expected to increase to $225 billion. The implications of this fact for our economy, especially for our stock market and our capital markets, should not be taken lightly.

It is essential that we monitor the effects of H.R. 12855, including the results of our tax incentives to pension plans, very closely. Careful analysis of the costs and benefits of this legislation is needed if we are to be able to judge the prudence of our efforts in this area. Also, we should be especially sensitive to any Federal measures which may prove unduly hard on small businesses or may further aggravate the trend toward bigness and concentration in our economy.

In addition, if we are to continue to use our tax system to subsidize private pension benefits, we'll need a lot more progress in distributing the tax benefits involved more equitably among all workers.

It is claimed that the new individual retirement account provided for in this bill will advance us toward this goal. This new creation should be watched very carefully to see whether it will in fact benefit low- and middle-income workers without pension plan protection—or whether it will become another tax shelter for those with high incomes who are well able to provide for their retirement without any additional help from the Federal Government.

We look forward to further consideration of the tax issues relating to pension reform when the committee takes up tax issues in the near future.

THE ROLE OF SOCIAL SECURITY

It became clear during the committee's consideration of H.R. 12855 that sufficient thought had not been given to the respective roles that will be played in the future by the social security and the private pension systems in providing retirement income security for working Americans. This is a general problem in that further decisions are going to have to be made on how Federal tax dollars, or tax benefits, can best be used for this purpose, if they are to be so used.

The committee did not take action on the thorny issue of "integration," but instead postponed further consideration of the problems of fairness which are involved until social security issues are taken up later in the year. It cannot be stressed too strongly that remedial action is needed in this area.

Integration is a particularly disturbing equity problem. Often involved are the attempts of those in charge of pension plans to exclude from the coverage of these plans those who earn less than the social security wage base—which is now $13,200 a year.

Chart 2 illustrates how integration can be used to eliminate or drastically reduce the private pension base for lower paid employees.

CHART 2

INTEGRATION

Private pension and profit sharing plans may be confined to wages above the social security base.

Employee	Salary	Less S. S. Base	Private Pension Base
A	$ 8,000	$ 10,800	$ -0-
B	12,000	10,800	1,200
C	130,000	10,800	119,200

Prepared by the Treasury Department. (*1973 social security wage base was used.*)

Chart 3 shows how integration affects the amount of employer contributions to a pension plan.

CHART 3

INTEGRATION

Private pension and profit-sharing plans may be confined to wages above the social security base.

Employee	Salary	CONTRIBUTIONS 5% Money Purchase Plan Without Integration	With Integration
A	$ 8,000	$ 400	$ -0-
B	12,000	600	75
C	130,000	6,500	7,425
		$ 7,500	$ 7,500

Prepared by the Treasury Department (December 1973).

Admittedly, the social security system provides basic retirement benefits for American workers. However, well over half of the work force makes less than $13,200 a year. If the purpose of our special tax benefits for pension plans is to induce businesses to operate pension plans for the benefit of their employees, is it appropriate to provide these full generous tax benefits to those who exclude their lowest paid employees from the protection of their pension plans—while reaping the tax benefits involved for themselves?

Should taxpayers be called upon to finance increased social security benefits to keep up with inflation and also be made to bear the tax loss which results from our special tax treatment for such "integrated" pension plans?

Studies by the Joint Economic Committee have shown that it is sometimes the person who pays the least in social security taxes who gets the most favorable treatment under present social security formulas. In view of this double inequity, it is time that Congress stopped letting the Internal Revenue Service regulate "integration" and made a thorough investigation of the problem. We look forward to early action by the Ways and Means Committee on this.

JAMES C. CORMAN.
SAM M. GIBBONS.

[From the Congressional Record—House, Feb. 25, 1974]

Employee Benefit Security Act of 1974

[Mr. Perkins asked and was given permission to extend his remarks at this point in the Record and to include extraneous matter.]

Mr. Perkins. Mr. Speaker, as the Members know, on last Tuesday the Committee on Rules granted a modified rule on H.R. 2, making it in order for the House to consider an amendment in the nature of a substitute to H.R. 2. That amendment represents the work of many weeks by both the Committee on Education and Labor and the Committee on Ways and Means.

On Tuesday afternoon, the Committee on Education and Labor met and approved title I of this amendment in the nature of a substitute. Since the amendment incorporates very substantial changes in substance and detail from H.R. 2, I thought it would be useful for the Members of the House to have an opportunity to see material in the nature of a committee report that they may be better informed on the bill and its substance when we debate it later this week:

Employee Benefit Security Act of 1974: Material Explaining H.R. 12906 Together With Supplemental Views

[To accompany H.R. 2]

The Committee on Education and Labor, to whom was referred the bill (H.R. 2) to revise the Welfare and Pension Plans Disclosure Act, having considered the same, reported favorably thereon and recommended that the bill pass. On February 19, 1974 the Committee considered and approved the text of H.R. 12906 and authorized the Chairman to offer those provisions as a Committee amendment in the form of a substitute for the text of H.R. 2 when it is considered by the House.

The Committee, in acting on this bill, anticipates that it will, in the House action, become a part of a bill dealing with retirement plans on both the broad basis contained in this bill as well as specific provisions dealing with qualifications for preferential treatment for tax purposes. It is expected that this bill will be combined with H.R. 12855, reported by the Committee on Ways and Means. Because of the coordination between the two bills, it is not expected that the dual jurisdiction provided for in the bill in the areas of participation, vesting and funding will present problems. Not only have the standards in the two bills been coordinated, but also provisions have been made for joint regulations in areas where problems might otherwise arise.

I. SYNOPSIS

The Employee Benefit Security Act as reported by the Committee is designed to remedy certain defects in the private retirement system which limit the effectiveness of the system in providing retirement income security. The primary purpose of the bill is the protection of individual pension rights, but the committee has been constrained to recognize the voluntary nature of private retirement plans. The relative improvements required by this Act have been weighed against the additional burdens to be placed on the system. While modest cost increases are to be anticipated when the Act become effective, the adverse impact of these increases have been minimized. Additionally, all of the provisions in the Act have been analysed on the basis of their projected costs in relation to the

anticipated benefit to the employee participant. In broad outline, the bill is designed to:

(1) establish equitable standards of plan administration;

(2) mandate minimum standards of plan design with respect to the vesting of plan benefits;

(3) require minimum standards of fiscal responsibility by requiring the amortization of unfunded liabilities;

(4) insure the vested portion of unfunded liabilities against the risk of premature plan termination; and

(5) promote a renewed expansion of private retirement plans and increase the number of participants receiving retirement benefits.

Provision is made for the imposition of criminal penalties on those willfully violating their duties under the Act. The Labor Department is given primary authority to administer the provisions of the Act, but the Committee has placed the principal focus of the enforcement effort on anticipated civil litigation to be initiated by the Secretary of Labor as well as participants and beneficiaries.

II. BACKGROUND

The private pension system is a relatively modern economic institution tracing its role as an important social and economic factor only from the mid 1940's. A variety of converging financial and social trends in our society have created a favorable environment for the growth and expansion of private deferred compensation schemes and retirement programs in general. As our economy has matured, an ever increasing number of employers have recognized their responsibility for the physical and economic welfare of their employees, even for the years beyond retirement. Its development parallels and is a response to the transition of the American life style from its rural agrarian antecedents into its present urbanized, wage earner society. The dynamic asset growth necessary to meet its responsibilities has placed the private pension system in a position to influence the level of savings, the operation of our capital markets, and the relative financial security of millions of consumers, three of the fundamental elements of our national economic security.

The growth of the private pension movement in the United States proceeded slowly until the years preceding World War II. As the full implications of the economic changes sweeping the nation were felt, American beliefs and attitudes regarding retirement security changed. The passage of the Railroad Retirement Act and the Social Security Act marked the turning point in American thinking, and dissatisfaction with those early governmental programs contributed to an accelerated interest in private retirement plans. The wage freezes imposed during World War II and the Korean conflict focused increased attention on the deferred component of compensation as a means of avoiding the freeze restrictions.

In 1947 a series of administrative proceedings and court decisions under the National Labor Relations Act of 1935 held that pensions were a form of remuneration for the purposes of that Act, and they accordingly became mandatory subjects of collective bargaining. (Inland Steel Company v. NLRB, 170 f.2d 247 (7th Cir. 1948), cert. denied, 336 U.S. 960 (1949)). In the same time period a Presidential fact finding commission in presenting its report on the steel industry labor dispute in 1949 stated that:

"We think all industry in the absence of adequate Government programs owes an obligation to workers to provide for maintenance of the human body in the form of medical and similar benefits and full depreciation in the form of old age retirement—in the same way as it now does for plant and machinery."

In 1940, an estimated four million employees were covered by private pension plans; in 1950, the figure had increased to almost 10 million and in 1960 over 21 million were covered. Currenty, over 30 million employees or almost one half of the private non-farm work force are covered by these plans. This phenomenal expansion of coverage has been matched by an even more startling accumulation of assets to back the benefit structure. Today, in excess of $150 billion in assets are held in reserve to pay benefits credited to private plan participants.

This rapid growth has constituted the basis for legislative efforts at both the federal and state levels to assure equitable and fair administration of all pension plans.

Various aspects of pension plans have been affected to some degree by most of the major labor legislation of the twentieth century, including the National Labor Relations Act (1935), the Labor Management Relations Act (1947), and the Labor Management Reporting and Disclosure Act (1959). However, not until 1958, with the enactment of the Welfare and Pension Plans Disclosure Act,

was legislation effected which was specifically designed to exercise regulatory controls over pension and welfare funds. Based upon disclosure of malfeasance and improper activities by pension administrators, trustees, or fiduciaries, the Act was amended in 1962 to designate certain acts of conduct as federal crimes when they occurred in connection with welfare and pension plans. The amendments also conferred investigatory and various regulatory powers upon the Secretary over pension and welfare funds. In the decade since the amendments were enacted, experience has shown that, despite intermittent enforcement of the reporting requirements and the criminal provisions, the protection accomplished by statute has not been sufficient to accomplish Congressional intent.

THE EXISTING LAW

The growth and development of the private pension system in the past two decades has been substantial. Yet, regulation of the private system's scope and operation has been minimal and its effectiveness a matter of debate. The assets of private plans, estimated to be in excess of $150 billion, constitute the only large private accumulation of funds which have escaped the imprimatur of effective federal regulation.

At the federal level, there are essentially three federal statutes which, although accomplishing different purposes and vested within different federal departments for enforcement, are all compatible in their regulatory responsibilities. These are the Welfare and Pension Plans Disclosure Act (29 U.S.C. Sec. 301 et seq.), the Labor Management Relations Act (29 U.S.C. Sec. 141, et seq.) and the Internal Revenue Code I.R.C. of 1954, Secs. 401–404, 501–503).

A complete description of the federal regulation affecting the administration of private plans can be found in Interim Report of The Private Welfare and Pension Plan Study, 1971, Senate Report No. 92–634 of the 92d Congress, 2d Session.

After a comprehensive investigation of abuses in the administration and investment of private fund assets, Congress adopted the Welfare and Pension Plan Disclosure Act in 1958. The policy underlying enactment of this Act was purportedly to protect the interest of welfare and pension plan participants and beneficiaries through disclosure of information with respect to such plans. The essential requirement of the Act was that the plan administrator compile, file with the Secretary of Labor, and send to participants and their beneficiaries upon written request, a description and annual report of the plan. It was expected that the knowledge thus disseminated would enable participants to police their plans. The Act was amended in 1962 to make theft, embezzlement, bribery, and kickbacks federal crimes if they occur in connection with welfare and pension plans. The 1962 amendments also conferred limited investigatory and regulatory powers upon the Secretary of Labor, and required bonding of plan officials.

Experience in the decade since the passage of the above amendments has demonstrated the inadequacy of the Welfare and Pension Plans Disclosure Act in regulating the private pension system for the purpose of protecting rights and benefits due to workers. It is weak in its limited disclosure requirements and wholly lacking in substantive fiduciary standards. Its chief procedural weakness can be found in its complete reliance upon the initiative of the individual employee to police the management of his plan.

The Labor Management Relations Act, Sec. 302, provides the fundamental guidelines for the establishment and operation of pension funds administered jointly by an employer and a union. The Act is not intended to establish nor does it provide standards for the preservation of vested benefits, funding adequacy, security of investment, or fiduciary conduct.

Tax deduction benefits accruing to employers are prescribed by the Internal Revenue Code under which the employer is granted a deduction within certain limits for contributions made to a qualified plan, and the investment earnings on such plans are made tax-exempt. To attain "qualified status" under the Code, the plan must be (1) for the exclusive benefit of the participants; (2) for the purpose of distributing the corpus or income to the participants; (3) established in such a manner to make it impossible for the employer to use or divert funds before satisfying the plan's liabilities; and (4) not discriminate in favor of officers, stockholders, or highly-compensated or supervisory employees.

The Internal Revenue Code provides only limited safeguards for the security of anticipated benefit in private plans since its primary functions are designed to produce revenue and to prevent evasion of tax obligations. The essence of enforcement under the Code lies in the power of the Internal Revenue Service to grant or disallow qualified status to a pension plan, thus determining the avail-

ability of statutory tax advantages. The Internal Revenue Service jurisdiction and enforcement capabilities are solely to allow various tax advantages to accrue to employers who establish and maintain pension plans which can quality for such tax benefit privileges.

In the absence of adequate standards, the participant is left to rely on the traditional equitable remedies of the common law of trusts. A few states, including New York, Washington, Wisconsin, Massachusetts, and California have codified existing trust principles and enacted legislation which requires in many instances a degree of disclosure similar to that required by federal statute.

The fact that statutory rules exist says little as to their efficacy in adjusting inequities that are visited upon plan participants, as evidenced by the hearings before this Committee. In almost every instance, participants lose their benefits not because of some violation of federal law, but rather because of the manner in which the plan is executed with respect to its contractual requirements of vesting or funding. Courts strictly interpret the plan indenture and are reluctant to apply concepts of equitable relief or to disregard technical document wording. Thus, under present law, accumulated pension credits can be lost even when separated employees are within a few months, or even days, of qualifying for retirement.

The proposed bill would, therefore, establish minimum standards of vesting, funding, and fiduciary and a system of compulsory benefit insurance to protect the security of pension rights.

As suggested by the President's Cabinet Committee Report of 1965; "As a matter of equity and fair treatment an employee covered by a pension plan is entitled, after a reasonable period of service, to protection of his future retirement benefit against any termination of his employment." Concern for loss of benefits by workers after long years of labor through circumstances beyond their control was similarly expressed by President Richard M. Nixon on December 8, 1971, when, in a message to the Congress he said, "When a pension plan is terminted, an employee participating in it can lose all or part of the benefits which he has long been relying on, even if his plan is fully vested . . . even one worker whose retirement security is destroyed by the termination of a plan is one too many."

III. MAJOR ISSUES

Although the need for legislative reform has been and continues to be widely acknowledged among all persons and sectors affected, federal mandation of essential improvement has been resisted due to the belief that such legislation might impede plan growth. However, the Committee's inquires have revealed that the costs associated with the vesting and funding proposals in the Act are sufficiently modest as not to constitute a major impediment to plan growth. Additionally, any added cost attributable to the imposition of vesting and funding standards will inure directly to the benefits and added security.

The principal issues affecting the vital and basic needs for legislation involved consideration of the essential elements of pensions:

Problem areas

While the achievements of private retirement plans are substantial, a number of serious problems have become apparent. Those dealt with by this bill can be briefly outlined as follows:

Inadequate coverage.—Despite the rapid growth in pension coverage, about one-half of all employees in private nonagricultural employment are still not covered. Moreover, many plans have overly restrictive age and service requirements for participation, resulting in the exclusion of many employees.

Inadequate vesting.—Present law generally does not require an employee plan to give a covered employee vested rights to benefits—that is, the right to receive benefits if he leaves or loses his job before retirement age. Many private pension plans do provide vested rights to benefits before retirement, but as a general rule, employees do not acquire vested rights until they have served a fairly long time with the firm and/or are relatively mature. As a result, even employees with substantial periods of service may not acquire rights to pension benefits upon separation from employment.

Inadequate funding.—A significant number of pension plans are not adequately funded—that is, they are not accumulating sufficient assets to pay benefits in the future to covered employees. Under the present minimum funding requirements, contributions to qualified plans must be at least large enough to pay the normal costs (the pension liabilities created in the current year) plus the interest on unfunded accrued liabilities attributable to the past service of the

covered employees. However, this minimum funding requirement is not adequate because it does not require the unfunded accrued liabilities for past service to be amortized.

Additionally, untimely termination of plans prior to completion of the funding cycle has led to inadequate reserves to meet plan liabilities where past or prior service credits are granted. No satisfactory vehicle currently exists to protect participants against such losses.

IV. PROVISIONS OF THE BILL

The bill deals with these problems in many different ways. The principal provisions of the bill are summarized below:

SUBTITLE A—CONTENTS; POLICY; DEFINITIONS

Purposes

The Employee Benefit Security Act is designed (1) to establish minimum standards of fiduciary conduct for Trustees, Administrators and others dealing with retirement plans, to provide for their enforcement through civil and criminal sanctions, to require adequate public disclosure of the plans' administrative and financial affairs, and (2) to improve the equitable character and soundness of private pension plans by requiring them to: (a) vest the accrued benefits of employees with significant periods of service with an employer, (b) meet minimum standards of funding and (c) guarantee the adequacy of the plan's assets against the risk of plan termination prior to completion of the normal funding cycle by insuring the unfunded portion of the benefits promised.

Section 1. Findings
Section 2. Declaration of policy
Section 3. Definitions

1. Employee Welfare Benefit Plan
2. Employee Pension Benefit Plan
3. Employee Benefit Plan (or Plan)
4. Employer Organization
5. Employer
6. Employee
7. Participant
8. Beneficiary
9. Person
10. State
11. Commerce
12. Industry or Activity Affecting Commerce
13. Secretary
14. Party in interest
15. Relative
16. Administrator
17. Separate Account
18. Adequate Consideration
19. Nonforfeitable (Pension Benefit or Right)
20. Security
21. Fiduciary
22. Regular Retirement Benefit
23. Accrued Benefit
24. Normal Retirement Age
25. Vested Liabilities
26. Current Value
27. Present Value
28. Normal Service Cost
29. Present Value of Annuity Certain
30. Accrued Liability
31. Unfunded Accrued Liability
32. Advance Funding Actuarial Cost Method (Actuarial Cost Method)
33. Government Plane
34. Church Plan
35. Individual Account Plan
36. Defined Benefit Plan
37. Supplemental Plan
38. Multiemployer Plan
39. Investment Manager

SUBTITLE B—REGULATORY PROVISIONS

Part 1—Fiduciary responsibility and disclosure

Section 101. Coverage

Title I would cover all private employee benefit plans under Commerce Clause jurisdiction except:

1. Federal, State and local governmental plans;
2. Plans required under workmen's compensation, unemployment compensation, and disability insurance laws;
3. Plans established or maintained outside the United States for the benefit of non-United States citizens;
4. Unfunded deferred compensation schemes of top executives.

Section 102. Duty of disclosure and reporting

The administrator of a pension or welfare plan would be required to publish to each participant or beneficiary a description of the plan as set forth in section 103 and a summary of the annual financial report as set forth in section 104. The report would be in such form and detail as the administrator finds necessary to disclose fully and fairly all pertinent facts.

Upon termination of a pension or welfare plan, the administrator would be required to file a special terminal report as prescribed by the Secretary of Labor.

Section 103. Description of the plan

Plan descriptions would be required to be published within 120 days after the establishment of a plan or within 120 days after a plan becomes subject to this title, whichever is later. Amendments to plans would have to be published within 120 days, and descriptions would have to be republished at least every 5 years. The description would have to be comprehensive and written in a manner calculated to be understood by the average plan participant. Among other things it would have to include: the name and address of the administrator; the schedule of benefits; a description of the plan's vesting provisions: the source of the plan's financing; and the procedures to be followed in presenting claims for benefits as well as those for appealing claims which are denied.

Section 104. Annual reports

An annual financial report to the Secretary of Labor would be required by this section for all plans. Sec. 105 provides that the Secretary shall exempt plans with less than 26 and may exempt plans with less than 100 participants. Information required in the report would include:

An audit and opinion by an independent qualified public accountant (with exceptions for public plans and financial statements certified by a bank or insurance carrier);

An actuarial statement of valuation (where appropriate) accompanied by a certification from the actuary preparing the valuation;

The number of employees, benefits paid, and information regarding fiduciaries, trustees and administrators and compensation paid them;

A summary financial statement of assets and liabilities;

A summary of receipts and disbursements;

A schedule of all assets listed by issuer;

A schedule of known party-in-interest transactions;

A schedule of loans which are in default and uncollectable;

A schedule of leases which are in default and uncollectable;

A bank or insurance carrier statement of assets and liabilities for common and collective trusts.

If some or all of the plan's assets are held in common or collective trust maintained by a bank or similar institution or in a separate account maintained by an insurance carrier, the bank or carrier would also be required to file a statement of assets and liabilities.

If some or all of the benefits under the plan are provided by an insurance carrier or other organization, such report would also have to include: The premium rate or subscription charge and the total premium or subscription

charges paid to each carrier and the approximate number of persons covered by each class of benefits; the total premiums received, the approximate number of persons covered by each class of benefits, and the total claims paid by such carriers, or, if separate experience ratings are not kept, a statement as to the basis of a carrier's premium rate or a copy of the financial report of the carrier.

Section 105. Publication

The Secretary would be authorized to reject any report which after a hearing before him was found to be incomplete or to contain a qualified opinion by an accountant or an actuary.

A copy of the plan description and each annual report would have to be filed with the Secretary of Labor who would make them available for inspection in the public document room of the Department of Labor. The administrator would be required to make copies of the annual report and plan description as well as the bargaining agreement, and trust instrument creating the plan available for examination by any plan participant or beneficiary in the administrator's principal office, and in such other places as necessary to fully and fairly disclose all pertinent facts.

All pension and welfare plan participants would be furnished with a copy of the plan description initially and a description of any subsequent amendment, including:

A schedule of benefits;

Eligibility and vesting provisions;

Claim procedures and remedies;

Basic of financing;

Other relevant plan provisions affecting their rights and the annual report, including a summary financial statement of assets and receipts and disbursements, and the ratio of assets to value of nonforfeitable pension benefits.

Upon written request to the plan administrator, or a participant could receive a copy of a statement as to his or her rights and the amount of any nonforfeitable benefit; and a copy of the plan, trust, bargaining agreement or other document. These copies would be furnished at the cost of reproduction.

Upon termination, all pension plan participants would receive a statement showing his or her benefits, indicating when and how they may be claimed, and including any other information affecting their rights.

A statement of a pension plan participant's right to deferred vested benefits from former pension plans would be furnished upon request to the Social Security Administration and when action is taken on the participant's Social Security account. To assure timely filing and payment of vested benefits, the address and identity of all plans would be kept up-to-date.

Section 106. Disclosure of benefit rights to participants

The administrator is required to inform each participant when his benefits become nonforfeitable. Upon written request of any participant or beneficiary, the administrator is required to disclose the rights of that participant.

Violation of the provision dealing with the retention of records subjects a person to a fine of up to $5,000 and/or imprisonment of up to 2 years. Violations of the provisions of 111(b)(2) (dealing with prohibited transactions) would subject a person to a fine of up to $10,000 and/or up to 5 years' imprisonment.

This section would give the Secretary of Labor authority to investigate any plan. He would be given authority to demand sufficient information as he may deem necessary to enable him to conduct his investigations.

Plan participants, beneficiaries, or the Secretary of Labor on behalf of the participants and beneficiaries would be allowed to bring civil actions to redress breaches of a fiduciary's responsibility or to remove a fiduciary who has failed to carry out his duties. The Secretary would also be empowered to bring an action to enjoin any act or practice which appears to him to violate the title. Civil actions brought by a participant or beneficiary may be brought in any court, State or Federal. However, the Secretary would have the right to intervene in a case and remove it to a Federal district court. In any actions by a participant or beneficiary, the Court could, at its discretion, allow reasonable attorney's fees and costs of action to either party. Class actions shall be brought where requirements for class actions could be met.

Section 107

All reports filed with the Secretary shall be public information.

Section 108

Detailed records must be retained for 6 years.

Section 109

Proven reliance upon a regulation or written interpretation by the Secretary of Labor would constitute a defense in a criminal or civil proceeding under certain sections of the act.

Section 110

Persons subject to the fiduciary provisions of the act would have to be bonded.

Section 111. Fiduciary responsibility

This section would deem every employee benefit fund to be a trust held for the exclusive purpose of providing benefits to participants and their beneficiaries as well as defraying reasonable administrative expenses. Each plan would have to be in writing.

A fiduciary is defined in section 3(29) as anyone who exercises any power of control, management or disposition with regard to a fund's assets or who has authority to do so or who has authority or responsibility in the plan's administration. Fiduciaries would be required to discharge their duties with respect to the fund ". . . solely in the interest of the participants and with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims."

A fiduciary would also have to diversify the investments, except in the case of profit-sharing, stock bonus, or thrift and savings plans, so as to minimize the risk of large losses under the circumstances it is prudent not to do so and in accordance with the documents and instruments governing the fund.

A fiduciary would be specifically prohibited from making the following transactions:

Dealing with such fund for his own account . . .

Acting in any transaction involving the fund on behalf of a party adverse to the interests of the plan or participant . . .

Receiving personal consideration from any party dealing with the fund in connection with a transaction involving the fund . . .

Transferring property to any party in interest for less than adequate consideration . . .

Permitting the acquisition of property from any party in interest for more than adequate consideration.

Section 112. Pension plan termination

An equitable priority distribution of assets would be provided upon plan termination. Assets not previously allocated to individual accounts would have to be distributed according to the following priorities:

(a) Contributions by employees would be returned;

(b) Those presently receiving benefits and those who could voluntarily elect to receive benefits;

(c) Those other than in (b)—to the extent of their vested benefits;

(d) All others, including the nonvested benefits of those in (c).

Benefit increases within 5 years prior to plan termination would trigger an allocation based on the prior benefit formula, any remaining assets being distributed on the basis of increases in the more recent benefit formulas:

(e) Investment income attributable to employee contributions would be distributed pro rata to the employees' accounts.

(f) Any benefit liabilities incurred as a result of plan termination would be given last priority.

(g) Any remaining assets would be returned to the employer if the plan so provides; otherwise, they would be distributed pro ratably to the employees.

Section 113

Certain persons convicted of crimes may not serve as officers, administrators, trustees, or paid consultants.

Section 114

A 15-member Advisory Council on Employee Welfare and Pension Benefit Plans would be established.

Section 115

The Welfare and Pension Plans Disclosure Act would be repealed upon the effective date of the act, which would be 6 months after enactment.

Part W—Vesting and eligibility requirements

Section 201. Coverage

Title III would cover all private pension benefit plans including profit-sharing plans which provide benefits after retirement, except:
1. Federal, State and local plans;
2. Keogh plans benefiting the self-employed and owner-employees;
3. Plans established or maintained outside the United States for the benefit of workers who are not United States citizens;
4. Executive deferred compensation plans;
5. Supplementary plans; and
6. Church plans.

Section 202. Eligibility requirements

No plan, after the effective date of this title, would be allowed to require as a condition for eligibility to participate in it an age greater than 25 or a period of service longer than 1 year (3 years for plans which provide for immediate 100% vesting or for crediting of all pre-participation service for benefit purposes), whichever is the later. Existing plans would be permitted to retain their eligibility requirements for 3 years or until they are amended, whichever is sooner.

Section 203. Nonforfeitable benefits

Every pension plan would be given a choice of one of three vesting rules:
1. Ten-Year Service Rule (100% vested at 10 years of covered service);
2. Graded 15 year service rule (25% vested after 5 years of covered service such percentage increasing by 5% each year until the tenth year and then at the rate of 10% for each additional year through the 15th when 100% vesting is achieved;
3. Rule of 45 (50% vested when age plus covered service equals 45, such percentage increasing by 10% each year until 100% is reached).

The vesting rules use a fully retroactive service provision in calculating the vesting percentage and the amount of the accrued portion of the regular retirement benefit. A plan would be permitted to change vesting rules at any time if provision is made that vested benefits not be reduced or delayed for participants in the plan at the time of change. A plan would always be permitted to allow for vesting of benefits after a lesser period and in greater amount than is required under any of the three vesting rules.

Class year profit-sharing plans.—Class year plans would be required to vest 100% of the employer's contribution no later than 5 years after the contribution was made.

Covered service.—In computing the period of covered service under a plan, an employee's entire service with the employer contributing to or maintaining the plan shall be considered. However, service prior to age 25, service during which the employee declined to contribute to a plan requiring employee contributions, service with a predecessor of the employer contributing to or maintaining the plan (except where the plan has been continued in effect by the successor employer), service broken by periods of suspension of employment (provided the rules governing such breaks in service are not unreasonable or arbitrary), and service where a participant has previously attained a 100% nonforfeitable right may be disregarded.

Contributory plans.—No plan may provide for forfeiture of benefits attributable to employer contributions on account of withdrawal of employee contribution.

Section 204. Distribution of nonforfeitable benefits to terminating participants

Vested benefits to participants terminating before 65 would have to be distributed, at the option of the participant, at regular retirement age or age 65. Vested benefits to participants terminating after age 65 would have to commence immediately at the option of the participant except that no plan would be required to commence paying any benefits to any participant, until such participant has completed up to 10 years of service. Survivor annuity and other options offered by a plan to normal retirees would have to be extended to all terminated vested participants.

Social Security offset plans.—Any pension plan with a Social Security offset feature would be required at the time of the first plan amendment, to provide that the amount of any offset not increase (1) for participants receiving benefits and (2) after the date of terminaiton of vested participant.

Section 205. Accrued Benefit Requirements

Each defined benefit plan would be required to credit benefits to participants over a period not to exceed 33⅓ years or in the alternative over a longer period of time but without excessive "front loading" or "back loading".

Section 206. Definition of Year of Service

The definition of Year of Service for purposes of eligibility, vesting and benefit accruals will have to meet a reasonableness standard.

Section 207. Effective date

Part 2 shall become effective with respect to existing plans for plan years beginning after December 31, 1975, except that with respect to multiemployer plans the effect may be deleyad until as late as plan years beginning after December 31, 1980 (where the bargaining agreements extend until that date).

Part 3—Funding

Section 301. Coverage

Title III would cover all private pension benefit plans covered under title II except for profit sharing and other individual account plans or plans not providing for employer contributions.

Section 302. Funding Account

Every pension plan subject to title III (other than the above) must make annual minimum contributions equal to:

1. Normal cost plus 30 (in the case of a single employer plan) or 40-year (in the case of a multiemployer plan) amortization of unfunded accrued liabilities for all plan benefits; any accumulated actuarial gains and losses would be spread over 15 years; or if larger,

2. A percentage of the unfunded portion of the present value of the nonforfeitable pension benefits. The unfunded portion would be recalculated each year so that an interest assumption of 5% would reduce the remaining unfunded portion by about 9.2% per annum or by about 57% in 20 years or 72% in 30 years. Contributions made in excess of the minimum could be used to offset future minimum contributions, thereby permitting funding flexibility.

Section 303. Enforcement of funding requirements; variances

Application would have to be made to the Secretary for a waiver of part or all of a minimum funding contribution. Benefits could not be increased until all such waived contributions had been paid off. After five waivers in a 10-year period, the Secretary could after notice and hearing order the termination of the plan or the merger of the plan with another plan of the employer. Benefits could not be increased by amendment during a period of waiver.

Section 304. Special distribution and merger requirements

Asset distributions or mergers which would dilute the benefits funded within priority classifications would be prohibited.

Section 305. Effective date

Part 3 shall become effective with respect to existing plans for plan years beginning after December 31, 1975, except that with respect to multiemployer plans the effect may be delayed until as late as plan years beginning after December 31, 1980 (where the bargaining agreements extend until that date).

Part 4—Plan Termination Insurance

Section 401. Establishment of Pension Insurance Corporation

This section establishes a Pension Benefit Guaranty Corporation administered by the Secretary, with a board of directors made up of the Secretary and two officers or employees of the Department of Labor.

Section 402. Purposes and Powers of the Corporation

The purposes of the corporation are to encourage the continuation and maintenance of voluntary private pension plans, guaranteed payment of benefits and to minimize the premiums charged to support the program. The corporation is granted all powers necessary to fulfill its function.

Section 403. Conditions of Insurance

The corporation shall insure any benefit loss arising from any termination proceeding under Section 112.

Section 404. Plan Termination Insurance Funds

Two primary trust funds covering single employer and multiemployer plans are established. Additional trust funds relating to optional and supplementary insurance coverage are established. Investment of the fund assets are at the discretion of the corporation. The corporation is authorized to borrow up to $100,000,000 from the Treasury.

Section 405. Premium Schedules

Separate premiums are required with respect to single and multiemployer plans. These premium rates must be uniform with respect to all plans within these groups. The premium will be levied one-half against the unfunded vested liabilities and one-half against the accrued liabilities.

Premiums charged for supplemental coverage shall be based on actual and projected experience losses. Initial premium rates for the period prior to filing a revised premium schedule as provided in Section 406 shall be limited to 0.1 percent with respect to single employer plans and 0.025 percent with respect to multiemployer plans.

Section 406. Revised Premium Schedule Procedure

Revision of the initial basic premium schedule to exceed the limits in Section 405, requires Congressional approval before becoming effective.

Section 407. Cooperation and assistance of Government agencies.
Section 408. Reports.
Section 409. Coverage.
Section 410. Reportable events.
Section 411. Termination of Plan.
Section 412. Management functions.
Section 413. Functions of Secretary.
Section 414. Employer liability.
Section 415. Allocation of assets.
Section 416. Effective date.

Part 5—General provisions

Section 501. Variations; Appeals Board

The Secretary is authorized to grant variations from the requirements of parts 2, 3 and 4 and section 112. A Variation Appeal Board would be established to hear and determine appeals from decisions denying grants of variations.

Section 502. Studies

This section directs the Secretary to conduct research relating to the effects of the act, the role of private pensions, the operation of public and private pension plans, and methods to encourage the growth of the private pension system.

Section 503. Enforcement

This section would give the Secretary authority to conduct such investigations as may be necessary to determine whether any person has violated or is about to violate any provisions of title II or III or any rules or regulations which would result from enactment of title II and III. Information about such investigations wou'd be made available to any interested person and included in an annual report by the Secretary. Criminal penalties of 5 years imprisonment and $10,000 fine or up to a $200,000 fine in the case of a corporate felon would be assessed for willful violation of the act. Civil actions by the Secretary, participants or beneficiaries to enforce the provisions of the act are authorized in Federal Court.

Sections 504. Annual report of the Secretary

The Secretary would be required to submit an annual report to the Congress covering his administration of the act.

Sections 505. Rules and regulations

This section would authorize the Secretary to prescribe such rules and regulations as he finds necessary to carry out the provisions of the act.

Section 506. Other agencies and departments

The Secretary would be authorized to enter into agreements that would avoid unnecessary expense and duplication and would permit cooperation among Government agencies in performing his functions under title II or III. He would also be authorized to reimburse other Federal agencies for facilities or services he utilized in doing so. The Attorney General would be authorized to receive such evidence as deevloped by the Secretary which may be found to warrant consideration for criminal prosecution.

Section 507. Administration

Chapters 5 and 7 of title 5 United States Code (relating to administrative procedure) would be applicable to this act.

No employee of the Department of Labor wou'd be able to administer or enforce the act with respect to any employee organization of which he is a member or employer organization in which he has an interest.

Section 508. This section would authorize to the Secretary such sums as may be necessary to carry out this act.

Section 509. If any provision of this act were held invalid, the remainder of the act would not be affected.

Section 510. Interference with the rights protected under the act would be unlawful—The provisions of section 404 and 405 would be applicable in the enforcement of this section.

Section 511

Any person who used coercion to interfere with the rights protected under the act would be subject to a $10,000 fine and/or imprisonment for up to 1 year.

Section 512. Registration

Within 270 days after the effective date of titles II and III, each pension and profit-sharing plan would have to file an application with the Secretary of Labor

for qualification and registration. Plans established after that date would have 270 days in which to file such application. Plan amendments similarly would have to be reported to the Secretary. A certificate would be issued and continued in force so long as the eligibility, vesting and funding requirements of the act are met.

Section 513. Enforcement of Registration

The Secretary of Labor may seek a court order to secure compliance whenever a determination is made that no application for registration has been filed, that the application should be denied or the registration canceled or that a plan has failed to make the required contributions or to pay such other assessments or fees as are required.

Section 514. Effect on Other Laws

All States laws would be pre-empted except for those covering plans not subject to titles II and III.

V. REASONS FOR THE BILL

One of the most important matters of public policy facing the nation today is how to assure that individuals who have spent their careers in useful and socially productive work will have adequate incomes to meet their needs when they retire. This legislation is concerned with improving the fairness and effectiveness of qualified retirement plans in their vital role of providing retirement income. In broad outline, the objective is to increase the number of individuals participating in employer-financed p'ans; to make sure to the greatest extent possible that those who do participate in such plans actually receive benefits and do not lose their benefits as a result of unduly restrictive forfeiture provisions or failure of the pension plan to accumulate and retain sufficient funds to meet its obligations; and to make the tax laws relating to qualified retirement plans fairer by providing greater equality of treatment under such plans for the different taxpayer groups concerned.

Essentially, this bill represents a significant improvement in the treatment now applicable to plan participants. Your committee regards the present legislation as part of an evolutionary process which keeps this basic framework but which builds on it new provisions which experience indicates are necessary for the proper functioning of these plans.

A fundamental aspect of present law, which the committee bill continues, is reliance on voluntary action by employers (and employees under contributory plans) for the establishment of retirement plans. The committee bill also continues the approach in present law of encouraging the establishment of retirement plans which contain socially desirable provisions. In other words, under the new legislation as under the present law, no one is compelled to establish a retirement plan. However, a retirement plan will now be required to comply with specified new requirements which are designed to improve the retirement system.

The Welfare and Pension Plans Disclosure Act, which is administered by the Labor Department, was adopted in 1958 to protect the interests of welfare and pension plan participants and beneficiaries by requiring disclosure of information regarding such plans. This Act requires the plan administrators to file with the Secretary of Labor and to send to participate upon written request a description and annual report of the plan. The Act was amended in 1962 to make theft, embezzlement, bribery, and kickbacks Federal crimes where these occur in connection with welfare and pension plans. The 1962 amendment also conferred limited investigatory and regulatory powers upon the Secretary of Labor. However, abuses in the administration of pension plans and in the handling of pension funds have continued.

The Internal Revenue Code (sec. 503(b)) seeks to prevent abuses in the use of funds held under qualified retirement plans by prohibiting qua'ified trusteed plans from engaging in certain specified prohibited transactions such as lending funds without adequate security and a reasonable rate of interest to the creator of the plan, his family, or corporation controlled by him. Other prohibited transactions include payment of excessive salaries, purchase of property for more than an adequate consideration, sale of property for less than an adequate consideration, or any other transactions which result in a substantial diversion of funds to such individuals. Special additional rules apply to payment of excessive salaries, purchase of property for more than trusts benefitting owner-employees.

VI. COMMITTEE VIEWS

Policy of "Employee Benefit Security Act"

Underlying the provisions of this Act is a recognition of the necessity for a comprehensive legislative program dealing not only with malfeasance and maladministration in the plans, or the consequences of lack of inadequate vesting, but also with the broad spectrum of questions such as adequacy of funding, plant shut downs and plan terminations, adequate communication to participants, and, in short, the establishment of certain minimum standards to which all private pension plans must conform if the private pension promise is to become real rather than illusory.

Definitions

The Committee has the following technical notes concerning definitions:

The definition of "employee" is intended to encompass any person who has the status of an "employee" under a collective bargaining agreement.

The exclusion of assets of investment companies regulated under the Investment Company Act of 1940 from the definition of "fund" is not intended to exclude participating share in an investment company held by the fund.

With respect to the term "profit-sharing retirement plan", it is intended that stock bonus, thrift and savings or similar plans with retirement features be treated as the equivalent of profit-sharing retirement plans for purposes of this Act unless expressly indicated otherwise.

With respect to the term "non-forfeitable right" or "vested right", it is not contemplated that vesting be required in benefits such as death benefits, disability benefits, or other forms of ancillary benefits provided by the plan. The plan may, of course, at its option, provide for vesting in such benefits.

With respect to "adequate consideration," it is intended that this term be read to include the fair market value of the use of leased property.

In formulating the definition of "multiemployer plan" the Committee was guided by the concept that such a plan, if sufficiently comprehensive in size or scope, would be unlikely to terminate because its existence did not depend on the economic fortunes of one employer or employer entity. The Committee recognized that certain single employer plans have characteristics similar to those of the multi-employer type described in the definition, but, on balance, it is believed that experience on plan terminations provides a reasonable basis for the distinction.

Also, in addition, the bill provides that an open-end mutual fund, the mutual fund's investment advisers, and the mutual fund's principal underwriters are not to be considered as plan fiduciaries or parties in interest merely because an employee benefit trust purchases shares in the mutual fund. Mutual funds are currently subject to substantial restrictions on transactions with affiliated persons under the Investment Company Act of 1940, and also it appears that unintended results might occur (such as presenting a trust from redeeming its mutual fund shares) if mutual funds were not excluded from these definitions. However, this provision would not prevent an investment adviser to a mutual fund being considered as a plan fiduciary in a situation where such adviser has the responsibility on behalf of an employee benefit plan to choose the plan's investment medium and selects the shares of the mutual fund for such investment.

The definition of the term "nonforfeitable" is intended to preclude any conditions to receipt of vested benefits other than those noted in the definition. Accordingly, receipt of a vested benefit may be conditioned on the survival of the participant or beneficiary, but in the case of a joint and survivor benefit, the death of a participant subsequent to the earliest age at which he or she could elect to receive any benefit in the form of an annuity from the plan will not have the effect of forfeiting the survivors benefit.

With respect to the term "supplementary plan" it is the intention that where there are two or more plans financed by the same employer or employers and where one plan is subject to the provisions of Parts 2 and 3 of the Act, the second plan be denominated as a supplementary plan if the first (Primary) plan is designed to provide a life annuity to each participant of not less than 2.0 percent of the final five year average compensation of each such participant.

In as much as the effect of having one plan defined as a supplementary plan will be to allow that plan to avoid the coverage under Parts 2, 3 and 4 of the bill,

the Secretary will have to exercise the utmost care to avoid jeopardizing the overall retirement security of the participants. The Committee expects that he will issue regulations which will protect against this possibility and he may choose to require funding in excess of the minimum requirements contained in Part 3, as a condition of receiving the exemption of coverage accorded the supplementary plan.

The Committee would expect that where two plans existed, one a defined contribution plan and the other a defined benefit, that the Secretary would not allow the special treatment accorded to supplementary plans to be extended to the defined contribution plan. This result should be avoided in the opinion of the Committee, as the basic retirement security of the participants in that environment would be best served by extending coverage to the defined benefit plan.

Part 1—Disclosure and fiduciary standards

Part 1 represents a major departure from current law. First, by additions to and changes in the reporting requirements designed to disclose more significant information about plans and the transactions engaged in by those controlling plan operations and to provide specific data to participants and beneficiaries concerning the rights and benefits they are entitled to under the plans and the circumstances which may result in their not being entitled to benefits. Second, by the addition of a new section setting forth responsibilities and proscriptions applicable to persons occupying a fiduciary relationship to employee benefit plans, including a "prudent man" standard for evaluating the conduct of all fiduciaries, and by barring from responsible fiduciary provisions in such plans for a period of five years all persons convicted of certain listed criminal offenses.

Reporting and Disclosure

The underlying theory of the Welfare and Pension Plans Disclosure Act to date has been that reporting of generalized information concerning plan operations to plan participants and beneficiaries and to the public in general would, by subjecting the dealings of persons controlling employee benefit plans to the light of public scrutiny, insure that the plan would be operated according to instructions and in the best interests of participants and beneficiaries. The Secretary's role in this scheme was minimal. Disclousre has been seen as a device to impart to employees sufficient information and data to enable them to know whether the plan was financially sound and being administered as intended. It was expected that the information disclosed would enable employees to police their plans. But experience has shown that the limited data available under the present Act is insufficient. Changes are therefore required to increase the information and data required in the reports both in scope and detail. Experience has also demonstrated a need for a more particularized form of reporting so that the individual participant knows exactly where he stands with respect to the plan—what benefits he may be entitled to, what circumstances may preclude him from obtaining benefits, what procedures he must follow to obtain benefits, and who are the persons to whom the management and investments of his plan funds have been entrusted. At the same time, the safeguarding effect of the fiduciary responsibility section will operate efficiently only if fiduciaries are aware that the details of their dealings will be open to inspection, and that individual participants and beneficiaries will be armed with enough information to enforce their own rights as well as the obligations owed by the fiduciary to the plan in general.

The bill recognizes the particular problems of multiemployer plans in reporting employees who terminate with vested rights. Separation from one participating employer may not be significant. Break-in-service rules may permit fairly extended periods of interrupted employment. The fact that an employee has become inactive in covered employment may not be known to the plan until a period of time, such as two years, has elapsed. Moreover, it may not be feasible precise statement of the vested status and non-forfeitable benefit of a terminated employee, whether because records of past or prior service have not been amassed or because it has not been possible for the plan administrator to secure other necessary data.

Fiduciary Responsibility

A fiduciary is one who occupies a position of confidence of trust. As defined by the Act, a fiduciary is a person who exercises any power of control, manage-

ment or disposition with respect to monies or other property of an employee benefit fund, or who has authority or responsibility to do so. It is not the intent of the Committee, however, that where the sole power of control, management or disposition with respect to plan funds rests with the participants themselves, as may be the case with respect to certain plans where the participant has the sole discretion over an individual account established in his name, that such participants shall be regarded as fiduciaries. The fiduciary responsibility section, in essence, codifies and makes applicable to these fiduciaries certain principles developed in the evolution of the law of trusts. The section was deemed necessary for several reasons.

First, a number of plans are structured in such a way that it is unclear whether the traditional law of trusts is applicable. Predominantly, these are plans, such as insured plans, which do not use the trust form as their mode of funding. Administrators and others exercising control functions in such plans under the present Act are subject only to minimal restrictions and the applicability of present State laws to employee benefit plans is sometimes unclear. Second, even where the funding mechanism of the plan is in the form of a trust, reliance on conventional trust law often is insufficient to adequately protect the interests of plan participants and beneficiaries. This is because trust law had developed in the context of testamentary and inter vivos trusts (usually designed to pass designated property to an individual or small group of persons) with an attendant emphasis on carrying out the instructions of the settlor. Thus, if the settlor includes in the trust document an exculpatory clause under which the trustee is relieved from liability for certain actions which would otherwise constitute a breach of duty, or if the settlor specifies that the trustee shall be allowed to make investments which might otherwise be considered imprudent, the trust law in many states will be interpreted to allow the deviation. In the absence of a fiduciary responsibility section in the present Act, courts applying trust law to employee benefit plans have allowed the same kinds of deviations, even though the typical employee benefit plan, covering hundreds or even thousands of participants, is quite different from the testamentary trust both in purpose and in nature.

Third, even assuming that the law of trusts is applicable, without detailed information about the plan, access to the courts, and without standards by which a participant can measure the fiduciary's conduct he is not equipped to safeguard either his own rights or the plan assets. Furthermore, a fiduciary standard embodied in Federal legislation is considered desirable because it will bring a measure of uniformity in an area where decisions under the same set of facts may differ from state to state. It is expected that courts will interpret the prudent man rule and other fiduciary standards bearing in mind the special nature and purposes of employee benefit plans intended to be effectuated by the Act.

Finally, it is evident that the operations of employee benefit plans are increasingly interstate. The uniformity of decision which the Act is designed to foster will help administrators, fiduciaries and participants to predict the legality of proposed actions without the necessity of reference to varying state laws.

It is to be noted that the definition of "employee benefit fund" excludes assets of an investment company regulated under the Investment Company Act of 1940 but any participating shares held by the employee benefit fund in an investment company are assets of the fund and subject to coverage under this section.

The Committee also has made provision for contributory plans to equitably distribute any surplus funds remaining on plan termination to the participants in accordance with their rate of contribution. This requirement is applicable only after plan assets have been used to satisfy all liabilities. The Committee believes it is unfair to permit the complete recapture by employers of surplus funds in terminated contributory plans, without regard to the fact that contributions by the workers helped to generate the surplus. The Committee wishes to emphasize that while it is not passing judgment on any particular case now pending, it has concluded that equitable principles require that this particular subject be governed by a specific rule which reflects what the Committee regards as essential protection for the interests of workers in such plans.

The principles of fiduciary conduct are adopted from existing trust law, but with modifications appropriate for employee benefit plans. These salient principles place a two-fold duty on every fiduciary: to act in his relationship to the plan's fund as a prudent man in a similar situation and under like conditions

would act and to act consistently with the principles of administering the trust for the exclusive purposes previously enumerated, and in accordance with the documents and instruments governing the fund unless they are inconsistent with the fiduciary principles of the section.

While the magnitude of improper practices is small in relation to the total number of plans in existence, the seriousness of the improper practices disclosed indicates the need for additional precautions to insure that these specific examples do not become general conditions.

It was the purpose of the Committee to include within the definition of fiduciary a broad range of persons dealing with these funds and to impose on them the obligations as specified in Section 111. While certain fiduciaries have been given additional, more specific duties under the bill, those not mentioned specifically as well as those with special obligations are equally responsible for their conduct under the provisions dealing with fiduciaries in general.

The Committee has adopted the view that the definition of fiduciary is of necessity broad and it intends to impose strict duties on those whose activities bring them within the definition. A fiduciary need not be a person with direct access to the assets of a plan nor is there any requirement of a written or other formal acknowledgement of fiduciary status. Conduct alone may in an appropriate circumstance impose fiduciary obligations. It is the clear intention of the Committee that any person with a specific duty imposed on him by this statute be deemed to be a fiduciary. This is a departure from current judicial precedents but is necessary to the proper protection of these plans. Imposition of the duty will of course give rise to liability for any breach of such duty.

The bill requires that actuarial valuations be prepared for each plan not less frequently than every three years. The requirement that each plan file its statement of valuation every year is designed to assure that interim changes or updating of the valuations will be available to all interested parties. These statements will be certified by enrolled actuaries who meet qualifications established by the Secretary. The bill contains broad standards for establishing these qualifications but underlying all of them is the strong conviction of the Committee that any such standards must go directly to the issue of professional competency.

The assumptions utilized in determining plan liabilities and assets and the choice of appropriate valuation and fundings methodology are crucial to adequate funding of a plan. The actuaries performing these plan services will fall within the definition of fiduciary and will be held to the duties imposed on such individuals, including personal liability for any breach of such duties. The Committee is convinced that notwithstanding the threat of personal liability, additional constraints are necessary to establish directly the professional qualifications of those who perform these vital services. In applying the standards for qualification outlined in the bill, the Secretary should be mindful of the difficult and sometimes subjective judgments to be made by actuaries and should take care that those who qualify be prepared to perform all of the tasks that may be required of an actuary under the bill. The prior restraints imposed on actuaries in the form of enrollment by the Secretary, as well as personal liability for failure to meet their responsibilities, imposed a substantial burden on the actuary. The Committee is convinced that such burden is consistent with the importance of the function performed by these fiduciaries.

Partial Termination

In the event of partial termination, net assets of the plan are to be allocated on behalf of the participants and beneficiaries giving rise to the termination in accordance with priority classes as if a complete termination had occurred. Calculations would have to be made, allocating the net assets of the plan to each priority class, as prescribed by the plan within the requirements of the statute, for all plan participants and beneficiaries, as if the entire plan were being terminated. This calculation, involving respective allocations, would determine the net assets to be allocated on behalf of the participants and beneficiaries giving rise to the partial termination.

Investment of Plan Assets

Fiduciaries exercising investment functions are required to diversify investments to minimize the risk of large losses unless under the circumstances it is prudent not to do so. The degree of investment concentration necessary to violate this requirement cannot be stated as a fixed percentage, because a prudent

fiduciary must consider the facts and circumstances of each case. The factors to be considered include (1) the purposes of the trust; (2) the amount of the trust fund; (3) financial and industrial conditions; (4) the type of investment, whether mortgages, bonds or shares of stock or otherwise; (5) distribution as to geographical location; (6) distribution as to industries; (7) the dates of maturity.

The fiduciary should not usually invest the whole or an unreasonably large proportion of the trust property in a single security. Ordinarily the fiduciary should not invest the whole or an unduly large proportion of the trust property in one type of security or in various types of securities dependent upon the success of one enterprise or upon conditions in one locality, since the effect is to increase the risk of large losses. Thus, although the fiduciary may be authorized to invest in industrial stocks, he should not invest a disproportionate amount of the trust fund in the share of corporations engaged in a particular industry. If he is investing in mortgages on real estate he should not invest a disproportionate amount of the trust in mortgages in a particular district or upon a particular class of property so that a decline in property values in that district or of that class might cause a large loss.

To apply these principles in a particular case is ultimately a judicial function. In the past, fiduciaries have seldom been liable for investment losses unless the degree of concentration in a single security or type of security has exceeded 50%. Currently we would expect the courts to follow those cases which have applied a stricter standard, particularly as to equities of a single issuer. On the other hand, there appears to be no judicial indication that a fiduciary would ordinarily be prohibited from investing as much as 25% of trust assets in one type of securities, like real estate in a particular locale or securities of a particular industry.

A fiduciary would also have to diversify investments so as to minimize the risk of large losses unless under the circumstances it is prudent not to do so. The assets of many pension plans are managed by one or more investment managers. For example, one investment manager, *A*, may be responsible for 10% of the assets of a plan and instructed by the administrator or trustee to invest solely in bonds; another investment manager, *B*, may be responsible for a different 10% of the assets of the same plan and instructed to invest solely in equities. Such arrangements often result in investment returns which are quite favorable to the plan, its participants, and its beneficiaries. In these circumstances, A would invest solely in bonds in accordance with his instructions and would diversify the bond investments in accordance with the diversification standards of section 111(b) (1) (C), the prudent man standard of section 111(b) (1) (B) and all other provisions applicable to *A* as a fiduciary. Similarly, *B* would invest solely in equities in accordance with his instructions and these standards. Neither *A* nor *B* would incur any liability for diversifying assets subject to their management in accordance with their instructions.

The list of prohibited transactions contained in Section 111(b)(2) does not preclude a fiduciary from performing additional services for the plan and receiving reasonable compensation therefor, since this is permitted by Section 111(c)(2). Section 111(b)(2)(E) also permits a fiduciary to contract with a party in interest for such additional services at no more than adequate consideration. The prudent man rule still applies to the fiduciary's arrangement for such services, however. Thus, for example, a bank acting as manager for a pension trust may also act as custodian for that trust or a brokerage firm acting as manager may also provide brokerage services itself or through a party in interest. The bank or broker, of course, may receive no more than reasonable compensation if it provides the service itself. If the bank or broker arranges for such services to be provided by a party in interest, the bank or broker may not permit such party in interest to receive more than adequate consideration.

The committee is aware that many Banks serving as trustees to personal trusts and pension trusts have traditionally held in their commercial departments cash in the process of investment, and cash awaiting disbursement to pay expenses and benefits. A number of short-term investment vehicles have been developed to keep such cash at a minimum.

Paragraph 111(b)(2)(A) is not intended to prevent bank trustees from holding such cash in their commercial departments so long as these funds are not excessive. The administration and investment of a pension plan requires the maintenance of reasonable cash balances. It would make no sense to require bank A to deposit such balances in bank B and vice-versa. The banking agencies review cash balances when they examine trust departments and the committee would assume the Labor Department, employers and plan participants would also watch the size of the cash balances maintained.

Objectives of the Main Provisions of the Bill

It is time for new legislation to conform the pension provisions to the present day situation and to provide remedial action for the various problems that have arisen in the retirement plan area during the past three decades. In taking action, the committee has been mindful of the need to construct the new requirements so that they will provide meaningful improvement in the various problem areas noted under the present law. At the same time, the committee is aware that under our voluntary pension system, the cost of financing pension plans is an important factor in determining whether any particular retirement plan will be adopted and in determining the benefit levels if a plan is adopted, and that unduly large increases in costs could impede the growth and improvement of the private retirement system. For this reason, in the case of those requirements which add to the cost of financing retirement plans, the committee has sought to adopt provisions which strike a balance between providing meaningful reform and keeping costs within reasonable limits.

Generally, it would appear that the wider or more comprehensive the coverage, vesting, and funding, the more desirable it is from the standpoint of national policy. However, since these plans are voluntary on the part of the employer and both the institution of new pension plans and increases in benefits depend upon employer willingness to establish or expand a plan, it is necessary to take into account additional costs from the standpoint of the employer. If employers respond to more comprehensive coverage, vesting and funding rules by decreasing benefits under existing plans or slowing the rate of formation of new plans, little if anything would be gained from the standpoint of securing broader use of employee pensions and related plans. At the same time, there are advantages in setting minimum standards in these areas both to serve as a guideline for employers in establishing or improving plans and also to prevent the promise of more in the form of pensions or related benefits than eventually is available.

Coverage.—One of the major objectives of the new legislation is to extend coverage under retirement plans more widely. For this reason, the committee bill sets minimum standards on the age and service requirements which can be used to exclude employees from participation in plans. Under the new rules a plan cannot require an employee to serve longer than one year or attain an age greater than 25 (whichever occurs later) as a condition of eligibility to participate in the plan. Thus, an employee who reaches age 25 and has at least a year of service would be eligible to participate (unless he is excluded for some reason other than age or service). However, a plan that provides vested rights immediately on participation will be permitted to set the participation requirements at no more than 3 years of service and age 25.

The Committee believes that these rules are reasonable. They provide a balance between the need to grant employees the right to participate in pension plans at a relatively early age so that they can begin to acquire pension rights and the need to avoid the administrative drawbacks that would be involved in granting coverage to immature and transient employees whose benefits would in any event be small. The participation rules also prevent potential avoidance of the vesting rules in the committee bill.

The bill also adopts a number of provisions which are carefully designed to make the minimum age and service requirements for participation work effectively. The Secretary is given the authority to determine under regulations what constitutes a year of service for purposes of fulfilling the participation requirement in order to make the service requirement sufficiently flexible to meet the many varying situations which arise in different industries operating under different conditions of employment. At the same time, guidance is provided to those framing the regulations so as to minimize the possibilities of abuse. The bill, for example, provides that a qualified plan may not establish a service requirement for participation which has the practical effect of treating as a year of service an average period for all employees of more than 12 months or which excludes any employee who has more than 17 months of continuous service. In addition, the bill provides that a seasonal employee whose customary employment is for at least 5 months in a 12-month period is generally to be given credit for a year of service if he works his custoamry season months in a 12-month period.

The Secretary is also given authority to prescribe by regulations different rules for determining a "year of service" for those industries whose normal work schedules are substantially different from those that are generally applicable. (For example, the regulations could, where consistent with the practice of an industry, permit 100 hours of employment to be treated as one month, or 1,000 hours of employment to be treated as one year.)

The bill also provides guidance to the Secretary in issuing regulations in regard to the computation of the years of service of an employee who has a break in service. This is of significance since an employee will generally receive greater vested rights if all his periods of service with the employer are combined and treated as one period of service than if each period of service interrupted by a break is treated separately. This matter involves difficult issues. On the one hand, it appears desirable not to require service prior to the break to be merged with service after the break where the break in service is of substantial duration and the period of prior service is relatively short. This is because in such cases, the plan frequently will not have records regarding the employee's prior service and the administrative difficulties resulting from any requirement to merge service prior to the break with service after the break might make employers reluctant to rehire employees and yet at the same time would not provide substantial benefits for the latter. On the other hand, where the break in service is of relatively moderate duration, treating each period of service as a separate period could give rise to abuses by giving employers an inducement to discharge covered employees and then rehire them after a short time in order to reduce the cost of financing plan benefits. An additional consideration is that where an employee has acquired an attachment to the firm by serving a substantial number of years, and particularly where he has accumulated substantial vested rights to benefits, it seems reasonable that all his service including service prior to the break should be taken into consideration in determining his participation under the plan.

Your committee has resolved these issues by providing that where an employer rehires an employee who has had a break of service of at least one year after serving with the employer for less than 4 consecutive years, the plan will not be considered to be following an unreasonable procedure merely because it does not take into consideration his prior service. However, where a rehired employee had completed at least 4 consecutive years of service before the break, his prior years of service must be taken into consideration for purposes of computing his years of service unless the break is for 6 years or more. However, if a rehired employee acquired a nonforfeitable right to at least 50 percent of his accrued benefits derived from employer contributions prior to the service break, all his prior service must be taken into consideration in computing his years of service, regardless of the duration of the break.

Under plans which provide defined or specified benefits, it is more expensive for an employer to finance an equivalent retirement benefit for an older employee than for a young employee. To avoid making it more difficult for older workers to find employment ,the bill permits plans which provide defined benefits to exclude from participation employees who begin employment within 5 years of the normal retirement age. This, for example, permits a defined benefit plan which provides for a normal retirement age of 65 to exclude an employee who begins work at the age of 60. Such exclusions are not permitted under money purchase pension plans or profit sharing plans. Under these plans, an employee is not promised any specified benefits, but instead is entitled only to the amount that is in his account (employer contributions, forfeitures, and employee contributions, adjustments for earning, losses, and expenses) with the result that it is no more expensive for the employer to cover older employees than younger employees under such plans.

Finally, all government plans (including the federal civil service pension plan) and plans of churches (unless they elect to be subject to the new rules) are exempted from the new particpation standards as well as from the minimum vesting and minimum funding standards described below. The committee exempted government plans from the new higher requirements because adequate information is not now available to permit a full understanding of the impact these new requirements would have on government plans. For this reason the bill specifically provdes that the Committee on Ways and Means and the Committee on Education and Labor are to study the participation, vesting, and funding practices of government plans, government plan fiduciary standards, factors affecting the mobility of government employees and those employed under Federal procurement contracts, and the need for Federal standards in each of these matters. Each committee is to submit to the House of Representatives not later than December 31, 1976, the results of the studies, together with its recommendations.

To give existing plans time to adjust to the new age and service participation requirements, the effective date of these requirements is deferred to January 1, 1976, for plans in existence on January 1, 1974. For plans adopted on or after

January 1, 1974, the new minimum age and service requirements will be effective in the first plan year beginning after the date of enactment. However, for existing plans which were the subject of collective bargaining agreements, the minimum funding standards will not apply until the last of the present collective bargaining agreements terminates or January 1, 1981, whichever is sooner.

Vesting.—Coverage under a pension plan does not aid an individual if he later forfeits his right to his pension benefits upon voluntary or involuntary termination of employment. This is an important consideration in view of the fact that ours is a fairly mobile economy where employees tend to change jobs frequently, especially in their younger years. Moreover, the cyclical and technological nature of certain industries results in frequent layoffs over a work career for employees in those industries, as in aerospace and defense. The committee bills deals with this problem by requiring pension plans to grant covered employees reasonable minimum vested rights to their accrued benefits.

The committee bill helps to assure that covered employees will actually benefit from pension plans by requiring plans, as a condition of qualification, to meet reasonable minimum vesting standards. Plans are required to grant covered employees nonforfeitable rights with respect to their own contributions. In addition, such plans are required to provide covered employees minimum vested rights with regard to employer contributions after they have fulfilled certain specified requirements. In adopting these minimum vesting requirements, your committee was guided by two broad considerations. The first relates to the need to balance the protection offered by the minimum vesting provision against the additional cost involved in financing the plan. Employees of course, would be accorded the maximum protection if they were granted immediate and full vested rights to plan benefits. However, it is generally recognized that a requirement for immediate and full vesting would not be feasible because it would involve such substantial additional costs that it would impede the adoption of new plans and the liberalization of existing ones.

The second broad consideration guiding the committee in regard to minimum vesting is the need to provide adequate flexibility to the hundreds of thousands of retirement plans, to enable these plans to provide adequate vesting protection to their covered employees in the light of the individual circumstances and conditions confronting them. In other words, the committtee does not believe that it would be desirable to force all retirement plans into one rigid mold so far as vesting is concerned.

In view of these considerations, the committee bill provides three alternative vesting options:

Under one option, a plan would be required to provide an employee with vested rights to at least 25 percent of his accrued benefits from employer contributions after 5 years of covered service, plus an additional 5 percent for each of the next 5 years and 10 percent for each of the next following 5 years. This means that under this option, at least 50 percent of the employer-provided benefits must be vested after 10 years of covered service and 100 percent vested after 15 years of covered service. This option is designed to enable plans to provide the required vesting on a gradual basis according to years of service, generally without reference to the age of the employee. This option is neutral with respect to age, since all employees who fulfill the required service requirements are entitled to the specified vesting without regard to their age.

A second option permits firms which wish to provide faster vesting for their more mature employees than for their younger ones to do so by taking into consideration the age of the employee as well as his service for purposes of computing his vested rights. Under this option, the plan is required to provide a covered employee who has at least 5 years of covered service a vested right in at least 50 per cent of the accrued benefits financed by the employer's contributions when the sum of his age and years of service equals 45; the minimum required vesting percentage would thereafter be increased by 10 percentage points a year in each of the following 5 years. This would, for example, provide an employee who began work for the employer at the age of 25, a vested right in 50 percent of his accrued benefits financed by employer contributions after 10 years of covered service when he reaches the age of 35. After completing an additional 5 years of service and attaining age 40 he would then be vested in 100 percent of his accrued benefits. On the other hand, an employee who starts to work for the employer at the age of 40 under this option would at the age of 45, upon completion of 5 years of service, receive a 50 percent vested right in his accrued benefits.

The third option provided under the committee bill permits qualified plans to fulfill the minimum vesting requirements by providing employees a 100 percent nonforfeitable right to accrued benefits derived from employer contributions when they have achieved at least 10 years of service. The committee provided this option because it grants covered employees complete vesting protection after the completion of a reasonably short period of service.

Because the objective is to encourage more adequate provision for retirement, plans are permitted to defer the payment of benefits to individuals with vested rights until they reach normal retirement age and are separated from the firm[1] As a general rule, the plan will specify what is normal retirement age for this purpose. However, in order to prevent undue delay in the payment of benefits, payment must begin not later than 60 days after the close of the last plan year in which the participant (1) attains age 65, (2) reaches the 10th anniversary of the start of his participation, or (3) terminates his employment. The "10th anniversary" provision was adopted to encourage the employment of individuals who are hired at mature ages for a long enough period to enable them to earn significant benefits under the plan.

The committee further decided to apply the minimum vesting requirements to benefits accrued prior to the effective date of the provision as well as to benefits accrued after this date on the ground that employees merit equal protection with regard to plan benefits regardless of when these benefits accrued. This is achieved by generally taking into account the employee's entire service with the employer in determining both his nonforfeitable vesting percentages and the amount of accrued benefits to which these vesting percentages are applied.

To keep the operation of the minimum vesting requirement reasonable and avoid imposing undue burdens on plans, certain periods of service are permitted to be excluded in determining the employee's nonforfeitable rights. The service which may be excluded is:

(1) service before age 25,

(2) service during a period for which the employee declined to contribute to a plan requiring employee contributions,

(3) service during any period for which the employee did not maintain the plan,

(4) seasonal service which does not include a sufficient long period of time in each 12-month period to be counted as service for purposes of the plan,

(5) certain service broken by periods of suspension of employment, and

(6) service before January 1, 1969, unless the employee has had at least 5 years of service after December 31, 1968. (This latter exclusion was adopted to prevent the possibility that plans would otherwise be required to incur extremely large costs for benefits to previously retired employees who would otherwise have the incentive to come back to a firm for relatively short periods of time, primarily in order to obtain plan benefits for their prior service).

How much protection is actually afforded to employees under the minimum vesting provision depends not only on the minimum vesting percentages set forth in the bill but also in the case of defined benefits on the accrued benefits to which these minimum vesting percentages are applied. For this reason, your committee has devoted particular attention to the development of fair and equitable procedures for the computation of accrued benefits.

Under the first option, the accrued benefit is determined by providing that the plan may not require employees to accrue benefits in any year of service at a rate which is more than $133\frac{1}{3}$ percent of the rate of accrual in any other year.[2] The primary purpose of this provision is to prevent attempts to defeat the objectives of the minimum vesting provisions by providing undue "backloading", i.e., by providing inordinately low rates of accrual in the employee's early years of service when he is most likely to leave the firm and by concentrating the accrual of benefits in the employee's later years of service when he is most likely to

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[1] However, to avoid requiring a plan to carry relatively small amounts of benefits on its books for a long period of time, the bill permits a plan to elect to pay off employee's vested rights in the form of a lump-sum payment when the employee is separated if the amount of the distribution is less than $1,750. In addition, at the election of the employee, a plan which so provides may make lump-sum payments of any amount to employees at the time they are separated from service in lieu of retirement benefits.

[2] In testing the annual rate of accrual for any plan year against the annual rate of accrual for any prior plan year, theplan may provide that accruals for any prior period before the 11th year of service are not to be taken into account.

remain with the firm until retirement. Of course, a plan under which employees accrue benefits at a uniform rate would satisfy the requirements of this option.

Under a second option, a defined benefit plan may provide for an annual rate of accrual which is not less than 3 percent of the maximum benefit to which the participant would be entitled if he became a participant at the earliest possible entry age under the plan and served continuously until the earlier of age 65 or the retirement age specified under the plan. This treatment provides equal amounts of accrued benefits to employees who are separated prior to retirement age after having worked the same number of years, regardless of their respective ages at the time the service was performed.

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Table 3 shows that the additional costs of financing plans involved when the minimum vesting requirement adopted by your committee becomes fully effective is expected to be moderate. These cost estimates are necessarily based on assumptions as to turnover rates, age distribution, etc. However, the range of costs is believed to be broadly indicative of the expected experience of employers generally.

TABLE 3.—ESTIMATED RANGE OF INCREASE IN PENSION PLAN COSTS UNDER THE REQUIREMENTS FOR MINIMUM VESTING ADOPTED BY THE COMMITTEE

	Present vesting—			
	None	Moderate [1]	Liberal [2]	All plans
Percentage of pension plan members covered under such plans	23	56	21	100
Range of present plan cost as a percent of payroll	1.8–11.2	2.2–12.5	2.2–12.7	1.8–12.7
Range of increase in cost under committee vesting requirement:				
As a percent of payroll	.2–1.5	.1–.2	0	0–1.5
As a percent of present plan cost	5.58	1.8	0	.58

[1] Plan provides some vesting, but less liberal than full vesting after 10 yr of service.
[2] Plan provides full vesting after 10 yr service or less, with no age requirement.

Source: "Estimates prepared for the Joint Committee on Internal Revenue Taxation," by Donald S. Grubbs, Jr.

The additional costs will of couse, be zero or smallest for those plans which now have liberal vesting provisions and greatest for those plans which now provide no vesting prior to retirement. This reflects the fact that the minimum vesting provisions will generally bring the costs of the latter plans up to the level of those plans which now have liberal vesting provisions. Overall, for all plans, the cost increases resulting from the new minimum vesting requirements will range from 0 to 1.5 percent of payroll.

In the case of plans adopted after January 1, 1974—which will have been adopted with knowledge of the new requirement—the effective date is the first plan year beginning after the date of enactment. However, for plans in existence on January 1, 1974, to provide time to adjust to the new minimum vesting requirements, the effective date of the minimum vesting standards is plan years beginning after December 31, 1975. For plans, which are maintained pursuant to collective bargaining agreements, however, the minimum vesting requirements take effect for plan years beginning after the expiration of the latest agreement or December 31, 1980, whichever is earlier (but in no event before January 1, 1977).

In addition, for all plans in existence on December 31, 1973, the vesting provisions are to become effective gradually over a 5-year transition period. Under this rule, 50 percent of the vested rights generally called for under the legislation are to become effective in the first year in which the vesting requirement applies. Thereafter the required vesting is to increase 10 percentage points each year until reaching 100 percent of the vested rights generally required under the legislation after the fifth year.

Finally, the Secretary is authorized to provide variances from the generally applicable minimum vesting requirements for plans whenever he finds that the application of these requirements would (1) increase the cost of the parties to the plan to such an extent that there would be (a) a substantial risk to the voluntary continuation of the plan, or (b) a substantial curtailment of pension levels or the levels of employees' compensation, or (2) impose unreasonable administrative

burdens regarding the operation of the plan, and (3) where the application of these requirements would be adverse to the interest of plan participants generally. Under such variances the Secretary would prescribe alternative methods by which the multi-employer plan concerned could satisfy the minimum vesting requirements for the period of time this is necessary. These variances from the vesting requirements are not, however, to be prescribed unless all plan participants and other interested persons have received adequate notice from the plan administrator of any hearing to be held to consider the variance.

Fundamental to the authority to grant variations is the consideration that the vesting, funding, and other requirements are intended to further the security of employees and not to inhibit or frustrate the provision of adequate benefits. Consequently, it will be important, in the opinion of the Committee, for the Secretary of Labor to give great weight, in granting variations, to the following factors: (a) that the benefits provided by the plan are relatively modest, (b) that the plan was established and developed through collective bargaining, and (c) that the employer or industry is one of declining or marginal profitability, with limited capacity to meet substantial increments in cost.

Minimum funding standards.—Your committee believes that it is essential for plans to be adequately funded in accordance with a contributions schedule which will produce sufficient funds to meet the obligations of the plan when they fall due. Such an adequate contributions schedule for funding plans not only protects the rights of employees under the plan but also provides an orderly and systematic way for employers to pay their plan costs.

Your committee believes that the minimum funding requirements under present law are inadequate because they do not require any provision to be made to amortize unfunded past service liabilities. Instead they merely require the contributions to the plan to be sufficient to pay normal costs attributable to the current operation of the plan and to prevent an increase in unfunded liabilities. To remedy this, your committee has provided new minimum funding standards for qualified plans. In the most typical case, the standard requires contributions to the plan to be sufficient not only to pay normal costs but also to amortize all unfunded past service liabilities in level payments over specified periods of time. A second standard requires contributions to be based on the accrued unfunded vested liabilities of the plan if this results in higher annual payments than the general funding standard. It is anticipated that this second standard will be used for only a small minority of the plans which have relatively large unfunded vested liabilities.

The new funding standards do not apply to the following types of qualified plans:

(1) Profit-sharing and stock bonus plans. (There is no need for a requirement that contributions be sufficient to fund a specified level of benefits in the case of these plans since they do not specify that participants are to receive any designated amount of benefits, but instead require the paying out of whatever benefits the funds in the plan will purchase on the date benefits are to begin.)

(2) Plans funded exclusively through the purchase of individual insurance contracts which provide for level annual premimum payments. (These plans are excluded from the funding requirements because they have behind them the funding of the insurance companies involved.)

(3) Government plans. (However, government plans are still required to meet the present funding standards which require contributions to be sufficient to pay normal pension costs plus the interest on past service liabilities. Also, as noted previously, your committee has provided for a study of government plans to determine the need for supplying funding standards.)

(4) Church plans unless these plans elect to be covered by such requirements, and

(5) Plans which after the date of enactment of the legislation do not provide for employer contributions.

In the most typical case where the first general funding standard is employed, employers maintaining single-employer plants not in existence on the effective date of the legislation must pay normal costs currently and amortize their past service liabilities in level payments over no more than 30 years. A similar amortization period of no more than 30 years is required for past service liabilities arising as a result of single-employer plan amendments after the effective date. However, in recognition of the fact that large numbers of plans assumed heavy past service liabilities prior to any requirement to amortize such liabilities plans in existence on the effective date of the legislation are allowed a longer period—

up to 40 years—to amortize past service liabilities existing at the beginning of the first plan year to which the requirement applies. In addition, multi-employer plans are allowed to amortize all past service liabilities, including those created after the effective date of the legislation, over a period of up to 40 years. This recognizes that multi-employer plans generally have an added element of financial strength in that their contributions come from a number of employers who as a group are less likely than comparable single employers to experience business difficulties.

This funding standard, which will apply to the overwhelming majority of plans, is comprehensive since it requires amortization of all accrued past service liabilities (i.e., both vested and nonvested unfunded past service liabilities).

The level payment method of funding adopted by your committee is analogous to the payment of a home mortgage in that each specified payment includes a payment for both interest and principal. It has the advantage of spreading the payments out evenly over the payment period which generally makes it easier for the employer to plan for meeting the payments. Another factor in your committee's decision is that the level payment method, while providing for adequate amortization of past service costs, initially adds only relatively moderate amounts to an employer's existing funding costs. This is because interest on unfunded accrued past service costs, which accounts for the bulk of the payments under the level payment method in the early years, is already required to be contributed to a defined benefit plan under present law.

Provision is also made for the equitable funding of experience deficiencies which arise when the actual plan costs turn out to be greater than were previously estimated on the basis of the actuarial assumptions to the extent that changes in the assumptions are required—for example, when the value of the plan assets is less than was expected. In establishing a minimum funding standard for such experience deficiencies, the committee sought to avoid two problems. If it allowed the experience, deficiencies to be funded over a very long period of time, an incentive would be provided for the use of actuarial assmptions which understate the costs since any resulting deficiencies could then be made up over a long period of time without penalty. On the other hand, if the experience deficiencies were required to be amortized over too short a period, employers would encounter hardship in meeting the annual payments. This is especially pertinent in view of the fact that most actuarial or experience deficiencies are inadvertent.

Your committee's bill seeks to avoid both these problems by allowing experience deficiencies to be funded in level amounts over a period of up to 15 years for single employer plans and up to 20 years for multiemployer plans. Symmetrical treatment is provided for experience gains which are attributable to a favorable variation between actual experience and the actuarial assumptions entering into the determination of the employer's cost and contributions.

The determination of experience gains and losses for this purpose will generally be made every three years except where the Secretary (pursuant to regulations) finds it necessary to require the determination to be made more frequently.

Relief measures are provided to mitigate the impact of the funding requirements in cases where it would otherwise result in hardship. The bill gives the Secretary the authority to proscribe an alternative to the minimum funding requirement in cases where the application of this requirement would involve substantial business hardships to the employer and would be adverse to the interests of plan participants in the aggregate.

Conceivably an attempt might be made to secure uniform application of the minimum funding standards by authorizing the Secretary or some other authority to establish the specific actuarial assumptions and methods that could be used by pension plans. This would involve, for example, setting a specific rate of interest that could be used by certain pension plans or by specifying certain turnover rates for specified types of firms. However, the committee does not believe that this would be an appropriate procedure, since the proper actuarial assumptions may differ substantially between industries, among firms, geographically, and over time. Further, in estimating plan costs each actuarial assumption may be reasonable over a significant range and it would appear that the proper test would be whether all actuarial assumptions used together are reasonable. These considerations strongly indicate that any attempt to specify actuarial assumptions and funding methods for pension plans would in effect place these plans in a straitjacket so far as estimating costs is concerned, and would be likely to result in cost estimates that are not reasonable.

For plans adopted after January 1, 1974, which will have been adopted with knowledge of the new requirement, the effective date of the new funding requirements is the first plan year beginning after the date of enactment. For plans in existence on January 1, 1974, which are not maintained pursuant to collective bargining agreements, the effective date of the minimum funding standards is deferred to plan years beginning after December 31, 1975. And for plans which are maintained pursuant to collective bargaining agreements, the minimum funding requirements take effect for plan years beginning after the expiration of the latest agreement (if this is after December 31, 1975) or after December 31, 1980, whichever is earlier.

Other provisions to protect covered employees and their beneficiaries.—In addition to the minimum participation, vesting and funding standards provided in the bill, your committee has adopted a number of specific provisions to protect the rights of employees nad beneficiaries under qualified plans.

Qualified plans must pay benefits in the form of a joint and survivor annuity, giving the surviving spouse an annuity equal to at least 50 percent of the annuity paid during the joint lives, unless the participant elects in writing before the annuity starting date not to take a joint and survivor annuity.

Qualified plans must provide that retirement benefits may not be assigned or alienated, except for voluntary and revocable assignments of not more than 10 percent of the benefits in payment of premiums for life insurance and medical and hospital insurance and certain other items.

Provision is made to prevent mergers or consolidation of plans from reducing the rights of participants. This is achieved by specifying that immediately after the merger each participant would be entitled to receive a benefit equal to or greater than the benefit he would have been entitled to receive immediately before the merger had the plan been terminated.

Protection is given to retired individuals and individuals who are separated from the service of the employer against reductions in private plan benefits when social security benefit levels increase. In general, under present integration procedures, social security benefits attributable to employer contributions are treated as though they were part of the private plan. As a result when the level of social security benefits increases, some integrated plans have reduced the amount of the retirement benefits that they provide for covered employees.

Present law under administrative practice provides that qualified plans may not use increases in social security benefit levels to reduce the benefits that they pay where the employees concerned are retired and are already receiving integrated plan benefits. The bill codifies this treatment for retired persons. It also extends the prohibition against reducing plan benefits where social security benfit levels are increased to cases where the individuals concerned are separated from service prior to retirement and have deferred nonforfeitable rights to plan benefits. This provision is effective for increases in social security benefits which take place after the date of enactment or on the date of the first receipt of plan benefits or the date of separation from service (whichever is applicable) if that date is later.

Portability.—In view of the fact that ours is a highly mobile economy, characterized by high employee turnover rates, various proposals have been made to establish a system for the portability of vested rights to benefits from one plan to another when an employee changes jobs.

While the complete portability of vested rights to benefits from one pension fund to another is hard to achieve because of the numerous basic differences in private pension plans, your committee's bill contains a number of provisions which will achieve much of the advantage of portability. Under present law, when an employee changes jobs, it is already possible for funds representing his vested rights to benefits under his old employer's plan to be transferred to the retirement plan of his new employer without payment of tax on an optional basis—that is, if the employee and the administrators of the plans involved agree to the transfer.

Provision also is made to supply adequate information to plan participants regarding their vested rights to retirement benefits so that they will not neglect to claim these benefits when they become eligible to receive them. In this connection, plan administrators are required to furnish each separated employee who has vested rights an individual statement showing the nature, amount and form of the deferred vested benefit to which he is entitled.

Also, in order to insure that employees will be fully alerted to their retirement benefits, the Social Security Administration will keep records regarding the

vested rights of separated employees under single employer plans. Annual information pertaining to such vested rights will be forwarded by plan administrators to the Social Security Administration through the Secretary of Labor. The Social Security Administration will then furnish this information regarding vested rights to individuals both on request and at the same time that official information is supplied to the employee or his beneficiary regarding social security benefits.

Because the furnishing of such information involves considerably more difficulties for multi-employer plans than for single-employer plans, the bill does not require multi-employer plans to supply individual statements regarding vested rights to separated employees; nor does it require multi-employer plans to file information showing the vested rights or separated employees. However, the Secretary, after consultation with the Secretary of Health, Education, and Welfare, may prescribe regulations requiring multi-employer plans to submit such information, to the extent it is found feasible.

Part 2. Plan participation—Age and service requirements

General reasons for change

The committee believes that, in general, it is desirable to have as many employees as possible covered by private pension plans and to begin such coverage as early as possible, since an empolyee's ultimate pension benefits usually depend to a considerable extent on the number of his years of participation in the plan. This is particularly important for employees who, because of the nature of their employment, shift from employer to employer over their working careers. In addition, early participation tends to spread the cost of providing employees with adequate pensions more evenly over the various firms for which the employee has worked over his entire working career, instead of concentrating the cost on his last few employers.

Of course, the general desirability of early participation must be balanced against the cost involved for the employer. Also from an administrative standpoint, it is not desirable to require coverage of transient employees, since benefits earned by short-term employees, in any case, are quite small. On the other hand, the committee believes that overly restrictive age and service eligibility requirements can arbitrarily frustrate the effective functioning of the private pension system. In view of these considerations, the committee has concluded that it is appropriate to specifically limit age and service eligibility requirements which an employer may incorporate in a qualified pension plan.

Explanation of provisions

In general.—In view of the considerations outlined above, the committee bill provides that a plan is not to require, as a condition of participation, more than one year of service, or an age greater than 25 (whichever occurs later).[3] The committee believes that this rule will significantly increase coverage under private pension plans, without imposing an undue cost on employers. From an administrative point of view, however, the rule will allow the exclusion of employees who, because of youth or inexperience with the job in question, have not made a career decision in favor of a particular employer or a particular industry. Also to encourage plans which provide 100 percent immediate vesting the committee bill provides that such plans may require 3 years of service (and on age of 25) as a condition of participation. The committee believes that these rules take full account of the reasonable administrative and cost needs of plans to exclude employees in high turnover or high cost of benefit categories.

Plans may provide for participation on the first of a month, quarter or year, rather than immediately after the point at which each employee attains age 25 and completes one year of service. It is expected that regulations will permit this practical accommodation provided that the terms will, on the average, provide participation directly after attainment of age 25 and completion of one year of service.

Year of service defined.—For purposes of the vesting and participation rules, the committee bill provides flexibility by indicating that the Secretary is to define

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[3] This rule applies whether or not the plan is a trusteed plan. That is, a plan funded through purchase of annuities from an insurance company is subject to these rules, as is a plan with investments managed by a trustee.

a "year of service" by regulations in a manner which provides for its determination on a reasonable and consistent basis. For example, the regulations could specify that a plan could provide that each employee who had met the age and service requirements was to begin his participation on the anniversary date of his own employment, or that all eligible employees would be admitted on the anniversary date of the plan, or that each employee would be covered under the plan on the first quarterly anniversary date of the plan following the anniversary date of his employment.

However, to ensure that no abuse situation arises, the bill provides certain guidelines as to what constitutes a "reasonable" definition of a year of service would have to be such that no employee with more than 17 months of continuous[1] service could be excluded from the plan on account of service; moreover, the average employee (assuming hypothetically that employees were hired at the same rate each day throughout the year) could not have a wait of more than 12 months for participation. Of course this definition does not apply for purposes of benefit accrual, and a plan may use any reasonable definition of "year of service" for this purpose that is consistently applied, so long as the plan meets the antidiscrimination requirements of the law.

A "year of service" for purposes of participation and degree of vesting, will be defined by regulations. The intention is to identify those who have displayed substantial attachment to the employment. Consequently, it is expected that regulations will give recognition to the patterns of employment typical of various industries and occupations. For example, a year of service for this purpose may be defined for the building and construction trades as 1,000 hours in any year set by the plan for measuring service; and in the event of less employment, a month may be credited for each 100 hours; or the case of the maritime trades 150 days per year of employment. Alternative definitions will be required, based on days or weeks of employment, to fit other patterns of employment.

Nothing in the bill precludes the crediting toward a year of service of non-work time such as periods of layoff, disability, military service, leaves of absence, etc., nor the application of such time in extending what would otherwise constitute a break in service under the plan.

Participation of temporary and seasonal employees.—In the case of the seasonal employee, whose customary employment is at least 5 months, his normal season will be treated as a year. For example, if there is a 5-month fishing season in a certain area, and a fisherman is employed throughout the season by a company having a qualified pension plan, then, on the anniversary date of his employment, the fisherman is to be treated under the plan as though he had at least twelve months of continuous service for purposes of determining his right to participate in the plan.

Break in service.—The bill also provides a series of rules as to the effect of an employee terminating his service with an employer but then subsequently returning. These determinations are used in deciding whether the vesting schedule is to start over after the participant's break in service or to continue as of its status when the break in service first occurred. The rules governing the treatment of breaks in service set forth below in general are designed to place the employee, when he returns to service, at the same point in the vesting schedule that he was before the break in service, insofar as this is practicable without creating serious administrative problems. The bill provides for four interrelating rules.

First, where a break in service has occurred, a plan can provide that where an employee subsequently returns to service, the earlier service is not added to the more recent service until the employee has been back at least a year. This rule makes it unnecessary to search out the extent of prior service in the case of employees who return but stay for only a short period of time.

A second rule provides that where an employee has been in service at any time in the past for a sufficiently long period of time to obtain a vested right to 50 percent or more of the accrued benefits from employer contributions, upon return to employment his prior service, before the break in service, is to be taken into account in applying the participation and vesting rules to his current situation. (The prior service would satisfy the plan's service requirements for participation.) The first rule set forth above, however, provides an exception to this rule.

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[1] The term "continuous" is also to be defined in regulations to take account of the problem of seasonal employees, as well as factors such as sick leave, holidays and vacation periods, etc.

Third, in the case of an employee who has completed 4 consecutive years of service before the break in service occurs, except as provided in the first rule above and the fourth rule below, service before the break is to be taken into account upon the employee's return to employment.

Fourth, in the case of an employee who has a break in service for a period of six years or more, service performed by the employee before the break in service need not be taken into account under the plan except in the case of employees coming under the second rule set forth above—that is, only where an employee has a vested right to 50 percent or more of employer contributions. Thus, where longer breaks in service occur, it will not be necessary to take into account prior service except in those cases where the employee had previously built up vested rights to the level of 50 percent or more.

Joint regulations on a year of service.—The regulations as to the meaning of a year of service, including those relating to breaks in service, are to be effective for plan years beginning after December 31, 1975, only if approved by the Secretary of Treasury. Where the bill's provisions apply before that date (as in the case of new plans and plans which elect earlier dates), then regulations may be prescribed without the necessity of approval by the Secretary of Treasury. However, those regulations are not to apply beyond the December 31, 1975, plan year cut-off date.

Other rules.—The committee intends that Labor regulations specify the extent to which service with a predecessor of the employer is to be counted for purposes of the eligibility requirements. In the case of a multiemployer plan, service with any employer who was a member of the plan is to be counted towards an individual's participation requirement.

For purposes of these rules (and elsewhere in the bill), a "multiemployer plan" is a plan maintained pursuant to a collective bargaining agreement, to which more than one employer is required to contribute, and to which no one employer makes as much as 50 percent of the contributions. (After a plan has once qualified as a multiemployer plan, however, up to 75 percent of the contributions may be made by a single employer without affecting the multiemployer status of the plan. In addition, the Secretary is authorized to prescribe regulations establishing certain other requirements in the case of a multiemployer plan, dealing, for example, with the extent to which the plan should be liable to make benefit payments to participants, regardless of whether the participant's employer continues to make contributions under the plan.

Maximum age requirement.—In order not to discourage the hiring of older employees, the bill would permit a defined benefit pension plan to exclude employees who are within 5 years of normal retirement age at the time they would otherwise become eligible to participate. Also, the plan may provide that the employee is not eligible to begin drawing retirement benefits until 10 years after he began to participate in the plan of participation. If a maximum age provision were to be prohibited, in the case of a defined benefit plan the cost considerations of providing a defined benefit to an older employee might discourage the hiring of the elderly. In the case of a defined contribution plan (such as profit-sharing plan or a money purchase pension plan), however, these cost considerations do not generally apply, and the committee therefore did not see why a maximum age limitation of this type should be permitted.

Government and church plans.—These provisions (as well as the corresponding provisions of the bill relating to vesting and funding) do not apply in the case of government plans, including the Federal civil service plan, and plans sponsored by State and local governments (including the District of Columbia), and any plan to which the Railroad Retirement Act applies. These plans may continue to remain qualified by continuing to meet the current law requirements (as in effect on the day before enactment). Also, new government plans may be qualified if they meet the requirements of present law. However, the Committee on Ways and Means and the Committee on Education and Labor are to study the extent to which it would be desirable to bring government plans under Federal participation, vesting, funding, and fiduciary standards, as well as matters affecting mobility of government employees and those employed under Federal procurement, construction, or research contracts or grants. The committees are to report to the House of Representatives no later than December 31, 1976.

Likewise, church plans (and plans of associations or convention of churches) will be exempt from the requirements of the bill unless the church files an election, in a form and manner to be prescribed in regulations, electing to come under

the participation, vesting, and funding provisions of the bill (and the other rules which relate to these provisions), rather than to comply with the requirements of present law. Once an election is filed, however, it will be irrevocable. Generally, a "church plan" includes any plan maintained by a church or association or convention of churches, other than a plan primarily for benefit of employees in an unrelated trade or business of the church, or a multiemployer plan which includes employees which are not churches. However, for purposes of this definition of "church plan", if the plan was in existence on January 1, 1974, and at that time covered employees of another organization exempt from tax (under sec. 501) which was an agency of the church, then employees of the agency are to be considered as employees of the church.

Effective dates

These provisions apply generally to plan years beginning after the date of enactment of the bill. However, to allow time for amendment for plans in existence on January 1, 1974, the provisions are to take effect in these cases for plan years beginning after December 31, 1975, unless the plan administrator makes an irrevocable election to have the provisions apply sooner (under regulations prescribed by the Secretary or his delegate), in which case the provisions will take effect at the beginning of the first plan year which occurs after the election.

Where the plan is subject to the provisions of a collective bargaining agreement in effect on January 1, 1974, the effective date is further postponed until plan years beginning after December 31, 1976, or, if later, plan years beginning after the expiration of the collective bargaining agreement (or the expiration of the last relevant agreement in the case of a multiemployer plan or a single plan subject to more than one collective bargaining agreement), but without regard to any extension made after the date of enactment. For this purpose, a collective bargaining agreement will not be considered as terminated if it can be (or is) reopened with respect to relatively narrow issues only. For example, a collective bargaining agreement would not be considered as being terminated for this purpose if it can be reopened with respect to the benefit payable to a surviving spouse, if it can be reopened because of a change in payments with respect to voluntary coverage under Part B of the Medicare benefits under the Social Security Act, or if it can be reopened to increase benefits with respect to a quite limited group of employees.

A question has arisen as to how the effective date rules are to be applied to a plan which includes employees subject to one or more collective bargaining agreements and also employees not under any such agreement. The intent is that the presence of an insignificant number of union members as participants in a plan is not to be sufficient to delay the effective dates for an additional 5 years. On the other hand, the presence of a small number of nonunion participants should not force the untimely renegotiation of labor-management contracts. As a result, your committee intends that a plan is to be regarded as maintained pursuant to a collective bargaining agreement if (1) either the contribution levels or the benefit levels under the plan are to be determined under the agreement and (2) at least 25 percent of the participants are members of the unit of employees covered by the agreement. In addition, where an employer has one plan for collective bargaining unit employees and another plan for other employees, but those plans are essentially the same with regard to benefits and contributions, then the two will be considered as one for purposes of applying the rule described above as to when a plan with both union and nonunion participants is to be entitled to delayed effective date provisions. Finally, where an employer has a plan for collective bargaining unit employees and another plan for other employees, and the second plan consists of two parts, one part of which is essentially the same as that for collective bargaining employees, the part which is essentially the same will be considered as a part of the collective bargaining plan for purposes of this effective data provision.

Vesting

Present law

Plans are now required to provide vested (i.e., nonforfeitable) rights to participating employees when they attain the normal or stated retirement age employees must also be granted vested rights if the plan terminates or the employer discontinues his contributions.

However, qualified corporate plans are generally not required to provide vested rights to participating employees before normal retirement age unless this is considered to be necessary—in view of the likely pattern of employees turnover—to prevent discrimination against the rank and file employees in favor of officers, shareholders, supervisors, or highly paid employees. In other words, preretirement vesting is required only where its absence would cause discrimination in favor of officers, etc., who could be expected to remain with the firm long enough to retire and qualify for benefits, while the rank and file employees would continually be separated from the firm and lose their benefits.

General reasons for change

Unless an employee's rights to his accrued pension benefits are nonforfeitable, he has no assurance that he will ultimately receive a pension. Thus, pension rights which have slowly been stockpiled over many years may suddenly be lost if the employee leaves or loses his job prior to retirement. Quite apart from the resulting hardship, your committee believes that such losses of pension rights are inequitable, since the pension contributions previously made on behalf of the employee may have been made in lieu of additional compensation or some other benefits which he would have received.

Today, slightly over two-thirds of the private pension plans provide some vested rights to pension benefits before retirement. However, as a general rule, employees do not acquire vested rights until they have been employed for a fairly long period with a firm or are relatively mature. Since there is no general applicable legal requirement for preretirement vesting, some plans do not offer this type of vesting at all, and among those plans which do, there is no uniformity in the vesting rules as provided. At present, only one out of every three employees participating in employer-financed plans has a 50-percent or greater vested right to his accrued pension benefits. Even for employees, a substantial portion do not have vested rights. For example, 58 percent of covered employees between the ages of 50 and 60, and 54 percent of covered employees 60 years of age and over, still do not have vested rights to even 50 percent of their accrued pension benefits. As a result, even employees with substantial periods of service may lose pension benefits on separation from employment. Extreme cases have been noted in which employees have lost pension rights at advanced ages as a result of being discharged shortly before they would be eligible to retire. In addition, your committee believes that more rapid vesting is desirable because it will improve the mobility of labor, and in this manner promote a more healthy economy.

For reasons indicated above, your committee concluded that it is necessary and desirable to provide a minimum standard of vesting for all qualified pension plans. Clearly, however, it would be counterproductive to increase employer costs by more rapid vesting to such an extent as to significantly curtail the creation of new retirement plans (or to significantly curtail the increase of benefits in existing plans). The committee bill deals with this problem by requiring that all plans must meet one of three minimum standards for vesting.

Explanation of provisions

General rule.—The committee bill provides that a qualified plan would have to meet one of three vesting standards with regard to benefits derived from employer contributions:

1. a graded vesting standard, under which the employee must be at least 25 percent vested in his accrued benefit after 5 years of covered service, with a gradual increase in this percentage in subsequent years, so that the employee must be 100 percent vested after 15 years of service;
2. full vesting after 10 years of covered service; or
3. a "rule of 45, under which an employee with 5 or more years of covered service must be at least 50 percent vested in his accrued benefit when the sum of his age and years of covered service total 45, with 10 percent additional vesting for each year thereafter.

Whichever of these alternatives is adopted, each employee would have to be fully and immediately vested in his accrued benefit derived from his own contributions.[1]

It should be made clear that the standards provided in the committee bill are only minimum standards. The bill's provisions are not intended to prohibit plans with more rapid vesting than that required under the standards in the bill.

[1] Thus, in general, the rules described hereafter relate only to benefits derived from employer contributions.

Your committee believes that the new vesting rules should provide flexibility, so as to allow plans to choose from several reasonable standards a vesting schedule best suited to the needs of the particular business, and so as not to disrupt existing plans which already have provided reasonable vesting under one of several formulas. In addition, a transition rule and delayed effective dates are provided, so that plans may be amended in an orderly manner to come into compliance with the new minimum standards. Compliance with any of these standards, together with continued vitality of the antidiscrimination standards of the Internal Revenue Code, should afford substantial protection to employees against possible loss of their pension rights.

Graded vesting.—One of the alternatives under the committee bill provides that a plan (whether trusteed or insured) would be required to give each participant vested rights to at least 25 percent of his accrued benefit from employer contributions after 5 years of service, plus 5 percentage points a year for each of the next 5 years and 10 percentage points a year thereafter. This would mean that there must be 100 percent vesting after 15 years of covered services.

This approach has the advantage of providing some vesting at a relatively early point in the employee's career. Thus, if the employee changes jobs after 5 years of service, he would be protected in his rights to at least some part of his accrued benefit. This rule (and, to a lesser extent, the 10-year 100-percent vesting rule and the rule of 45 vesting rule) proceeds on the assumption that some part of the obligation to provide reasonable retirement benefits should be shifted from the employee's last employer and should be shared by those who employed him earlier in his working career.

Ten-year 100-percent vesting.—Another alternative under the committee bill provides that a qualified plan could meet the vesting requirements by giving each participant vested rights to 100 percent of his accrued benefit derived from employer contributions after 10 years of service.

This approach avoids the recordkeeping and other administrative costs involved in accounting for partially vested rights. In the case of the employee who serves for 10 years, this alternative provides greater vesting protection than the graded vesting rule (discussed above) or, in general, the rule of 45 (discussed below).

The "rule of 45".—The third alternative under the bill, known as the rule of 45, would require that a plan provide each employee with vested rights to at least 50 percent of his accrued benefit when the sum of his age and years of covered service equals 45 (subject to a minimum service requirement of 5 years), with at least 10 percent additional vesting for each year of service thereafter.

The age-weighted approach has the advantage that it provides more protection to the older worker, who is closer to retirement, and who may not get another chance to earn a pension if he leaves his employment prior to retirement.[2] For this reason, your committee believes that the rule of 45 should be available as an alternative for those plans which would prefer to take an age-weighted approach.

Transition rule.—Your committee has concluded it is important that all qualified plans ultimately meet one of the three minimum standards in the bill. However, to impose the full force of these standards on existing plans without some transition period would, in some cases, subject these plans to substantial additional costs to pay for the required vesting, possibly causing a reduction of benefits in some plans, or even plan termination. To ease the cost factor in the case of plans already in existence which have not previously been subject to vesting requirements such as those set forth in the committee bill, the bill provides a transitional rule under which plans actually in effect on December 31, 1973,[3] would have a reduced vesting requirement for the first 5 years to which the new rules apply.

During the first year to which the bill's vesting standards apply, the plan would have to provide at least 50 percent of the regular requirement under the applicable vesting schedule—this 50-percent level would have to then be increased by 10 percentage points a year, so that the new rules would fully apply in the sixth year after the effective date. For example, under the graded vesting

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[2] Under the present law, all rights must be fully vested when the employee attains the normal or stated retirement age, but an older employee who terminates his service prior to reaching retirement age generally does not have to be vested under present law (except to prevent discrimination).

[3] A plan which went into effect after this date would not be eligible to use the transitional rule, even if the plan agreement included a retroactive clause which provided that the plan was in effect "as of" December 31 1973.

approach, during the first year in which the rules were applicable, an employee with 5 years of covered service would be at least 12.5 percent vested in his total accrued benefit (50 percent of the 25-percent requirement which is generally to apply after 5 years of service); this would increase to 18 percent the next year as the next step in the transition period was reached and also as the employee moved along the graded vesting schedule (60 percent of 30 percent), 24.5 percent the next year (70 percent of 35 percent), 32 percent the next year (80 percent of 40 percent), 40.5 percent the next year (90 percent of 45 percent), 50 percent the next year (100 percent of 50 percent), and by an additional 10 percentage points each year thereafter under the fully effective graded vesting schedule alternative of the bill. By use of this gradual approach, your committee believes that it will be possible to implement the new rules with a minimum of disruption to existing plans.

Preparticipation service.—Once an employee becomes eligible to participate in a pension plan, generally all his years of service with an employer, including preparticipation service, are to be taken into account for purposes of determining his place on the vesting schedule.

However, the plan may ignore service during a period for which the employee decided not to make contributions to a plan requiring employee contributions. Also, service need not be taken into account for periods for which the plan employer did not maintain the plan (e.g., periods before the plan was established or after the employer discontinued contributions but the plan was kept in existence for the purpose of paying already-earned benefits when due).

The committee bill also provide that for purposes of the vesting schedule, service before age 25 may be ignored whether or not the employee was a participant in the plan. This will have the effect of not discouraging plans from providing immediate participation and accrual of benefits for all employees. For example, in a plan providing for immediate participation, at age 30 an employee who had started on the job at 18 would have to be at least 25-percent vested in 12 years of accrued benefits under these rules (instead of only 5 years of accrued benefits, which would be the case if the plan did not permit participation until the employee was 25).

Service for an employer is to be taken into account for purposes of placement on the vesting schedule, even though the service was in a different division of the corporation, or with a different corporation member of the affiliated group. However, the bill does not require that such service be taken into account for purposes of accruing benefits while the employee works for a division which does not have a plan. This may be illustrated by the following example.

Assume that an employee begins work at age 25 for division A of a corporation, which does not have a pension plan, and, at age 40 he transfers to division B, which does have a plan. Under all of the vesting standards, the employee would immediately become fully vested in the benefits which accrue under the plan, because of his 15 years of prior service with the employer.[4]

Benefits accrued in the past.—Generally, the vesting requirements of the bill are to apply to all accrued benefits, including those which accrued before the effective date of the provision. Years of service prior to the effective date also are to be counted for purposes of determining the extent to which the employee is entitled to vesting. For example, in the case of a plan electing the graded vesting alternative, if an employee joined a company at age 30 (at which time a plan was in effect), became a participant in the plan at age 35, and was age 40 on the effective date of the vesting provisions, he would have to become at least 50-percent vested at that time based on 10 years of service (although this percentage would be reduced under the transition rule for plans in effect on December 1, 1973). However, he might not have more than 5 years of accrued benefits since the minimum benefit accrual is based on participation.

This would occur because of his 5 years of participation under the plan plus his 5 years of preparticipation service. Without this pre-effective date rule, it was apparent to your committee that employees who are now older employees would receive the advantages of required vesting only for the accrued benefits they would be able to build up gradually in the future and would receive no protection for benefits accrued prior to the effective date of these provisions, which would usually be the bulk of the benefits earned during their lifetimes.

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[4] Conversely, an employee who worked for 5 years in division B, and then shifted to division A, would continue to increase his percentage of vesting in the benefits which he had accrued under the division B plan, even though division A did not have a plan. Of course he would accrue no benefits in the division B plan on account of his division A service (unless the plan provides otherwise).

Your committee considered various methods of providing that pre-effective date service be taken into account in the case of older employees only, but concluded that most such methods provided some type of undesirable "notch" effect and in most cases would result in little cost saving to the employer relative to the rule adopted in the bill.

However, it does not appear to be desirable to provide for retroactive vesting for employees who have already terminated their service with the employer, since this would create a substantial unexpected cost for the plan (thereby possibly jeopardizing the size of benefits for employees still covered under the plan) and might involve serious record-keeping problems. Thus, the committee bill specifically provides that the plan is not required to take into account service performed prior to January 1, 1969, until the employee has served at least 5 years with his employer after December 31, 1968.

Multiemployer plans.—In the case of a multiemployer plan governed by a collective bargaining agreement, the vesting requirements of the committee bill generally are to be applied as if all employers who are parties to the plan constituted a single employer. For example, years of service with employers A and B under the plan will be counted together in determining vesting, even though the employee now works for employer C.

Service that is seasonal, intermittent, etc.—For purposes of the minimum vesting rules, the question of whether an employee has performed a "year of service" will be determined in accordance with the same regulations which defined this term in connection wtih the participation requirements, described above. Of course, a seasonal or part-time employee who performs a year of service for purposes of determining his place on the vesting schedule, may nonetheless accrue benefits at a slower rate than his full-time, year-round counterpart. However, the relationship between the rate of accrual for a full-time employee, and a part-time or seasonal employee would have to be reasonable and applied on a consistent basis under the plan in order to meet these requirements. Service with a predecessor of the employer would also be counted, for purposes of the vesting rules, to the extent provided in regulations. Your committee anticipates that the regulations in this area will prevent a situation where an employee might lose his rights to vesting as a result of a business reorganization.

The basic rules have been set forth in terms of "years of service". However, the committee recognizes that there are a substantial number of industries in which the common concepts of years, months, weeks, or hours of service do not apply. For example, it may be appropriate in some industries to provide that a participant must work at least 1,000 hours in order to have completed a "year of service" for purposes of the participation rules and for purposes of determining where he is to be placed on the vesting schedule. Under the bill, the regulations are to take into account such variations of customary working periods.

It must be noted that it is not necessary that the "year of service" concept used for participation or vesting purposes be the same as the "year of service" concept used for purposes of accrual of benefits. For example (as indicated above), in a particular industry it may be appropriate to advance a person one year on the vesting schedule if he has completed 1,000 hours of work during the plan year. However, that same plan may provide that a full year's worth of benefits will accrue only if the employee completes 1,600 hours of service during the plan year. In such a case, completion of 1,200 hours would provide an accrual of .75 of a year's benefits, 1,000 hours would provide accrual of .625 of a year's benefits, 800 hours would provide accrual of .5 of a year's benefits.

Permitted forfeitures of vested rights.—A retirement plan under the committee bill may provide that all employee's vested rights in accrued benefits derived from employer contributions (but not from his own contributions) may be forfeited in the event of the employee's death (although this exception is not to apply if the employee had retired or was eligible to retire and a "joint and survivor" annuity was to be provided).

Also, a plan is permitted to suspend payment of benefits while the participant is working for the employer (for example, where an easy retiree returns to work to increase his subsequent pension benefits). In the case of a multiemployer plan, the benefits may be suspended if the employee has resumed employment in the same industry even though not with the same employer. These rules are not to prevent suspension of part of an early retirement supplement (such as a so-called social security supplement) on account of reemployment, even with another employer or in another industry.

In addition, the bill provides for circumstances under which a retroactive plan amendment, if approved for this purpose by the Secretary, may be permitted to divest accrued benefits that had already become nonforfeitable. In order to be approved by the Secretary, such a retroactive amendment which divests what were otherwise nonforfeitable benefits, must have been initiated by the Secretary or proposed by the plan administrator and the Secretary must be satisfied that the administrator has given adequate notice of all plan participants and other interested persons. The Secretary must then give those interested persons an opportunity to be heard and must notify the Secretary of the Treasury of any such hearing. Further, the Secretary may approve such a divesting retroactive amendment only if he finds that (1) the amendment affects the plan only to such an extent as is necessary or appropriate to carry out the purposes of this pension bill and to provide adequate protection to the participants and beneficiaries, (2) but for the amendment, there would be a substantial risk to the voluntary continuation of the plan or a substantial curtailment of pension benefit levels or the levels of employee compensation, and (3) failure to make the amendment would be adverse to the interests of plan participants in the aggregate. Your committee concluded that, when such conditions occurred and those procedural safeguards were followed, it was appropriate to permit these divestitures.

It is permissible for the employee's vested accrued benefits to be "cashed out" under specified circumstances. On termination of participation if the value of the nonforfeitable benefit is less than $1,750, then the benefit may be cashed out by a lump-sum distribution whether or not the employee agrees to receive the distribution (but only if the plan permits such a distribution without regard to the employee's preferences.) If the employee agrees to the cashing out of his nonforfeitable benefit then, whether or not the amount is less than $1,750, the benefit may be cashed out if the distribution was made on termination of the employee's participation in the plan or under such other circumstances as may be provided by regulations. Such a nontermination cashing out of accrued benefit might be permitted, for example, on the occasion of a revision of the formula for computation of accrued benefits under the plan. It must be noted that the rule described above permits the cashing out of vested accrued benefits but the service to which those benefits relate nevertheless must continue to be taken into account, in accordance with the rules described above (service that is seasonal, intermittent, etc.) for purposes of determining whether the employee has met the service requirement for participation and for the purposes of determining the employee's place on the vesting schedule with regard to benefits that accrue in the future. Also in cases where the employee's accrued benefit is not cashed out when the employee leaves the employer's service, if the employee is later reemployed, his percentage of vesting in the benefit which accrued before the service break may be increased on account of service which occurs after the break.

With the limited exceptions noted above, no rights, once they are required to be vested, may be lost by the employee under any circumstances (although as under present law, the plan may pay the employee the actuarial value of his vested rights upon separation from service). For example, a vested benefit is not to be forfeited because the employee later went to work for a competitor, or in some other way was considered "disloyal" to the employer.[5] Also, rights to benefits are not to be forfeited merely because the employer (or plan administrator) cannot find the employee.

Accrued benefits.—Under the committee bill, the vested employee is protected in his rights to all, or a certain percentage, of his "accrued benefit." It is necessary to provid a statutory definition of an "accrued benefit" because, unless this is a defined amount, vesting of an "accrued benefit" in whatever form is specified by the plan has little, if any, meaning. In the case of any retirement plan other than a defined benefit pension plan, under the bill the employee's "accrued benefit" is the balance in his plan account.[6] This would include, for example, a money purchase pension plan, a profit-sharing plan and a stock-bonus plan.

In the case of a defined benefit plan the bill provides that the accrued benefit is to be determined under the plan, subject to certain requirements. The term

[5] Some plans also provide that an employer may have lien rights against employee interest in a pension plan. These clauses would also be prohibited under the committee bill, except where the plan requires that the employee be given prior notice of any impending lien and there is a judicial hearing on the probable validity of the employer's claim.

[6] Separate accounting for each employee is required under the committee bill in the case of contributions to a defined contribution plan and for voluntary employee contributions to a defined benefit plan.

"accrued benefit" refers to pension or retirement benefits and is not intended to apply to certain ancillary benefits, such as medical insurance or life insurance, which are sometimes provided for employees in conjunction with a pension plan, and are sometimes provided separately. To require the vesting of these ancillary benefits would seriously complicate the administration and increase the cost of plans whose primary function is to provide retirement income. Also, where the employee moves from one employer to another, the ancillary benefits (which are usually on a contingency basis) would often be provided by the new employer, whereas the new employer normally would not provide pension benefits based on service with the old employer. Also, the accrued benefit to which the vesting rules apply is not to include such items as the value of the right to receive benefits commencing at an age before normal retirement age, so-called social security supplements which are commonly paid in the case of early retirement but then cease when the retiree attains the age as which he becomes entitled to receive current social security benefits, and any value in a plan's joint and survivor annuity provisions to the extent that exceeds the value of what the participant would be entitled to receive under a single life annuity.

The accrued benefit which is to be vested is defined in terms of the benefit payable at normal retirement age. That is to be the age designated as such by the plan, but not later than 65 and the completion of 10 years of participation.

The annual benefit payable from the normal retirement age is to be the benefit as generally defined in the plan, subject however to one of two limitations intended to assure a fair and proportionate accrual for employees who acquire nonforfeitable rights to deferred benefits. The minimums are prescribed to avoid the possibility that a plan may set so low a rate of accrual for relatively short service or for younger employees as to emasculate the vesting requirements.

One alternative minimum is that the accrual for each year of participation is not to be less than 3 percent of the plan's maximum benefit for a participant who began participation at the earliest possible entry age under the plan and continued to normal retirement age. The maximum accrual is of course limited to 100 percent of such maximum benefit.

The objective of this minimum is to deal with a wide variety of benefit formulas by prorating the maximum benefit payable at the normal retirement age over a full working career of not more than 33⅓ years.

The other alternative minimum is that the plan may define its own rate of benefit accrual for each year of service, except that with respect to years of service (for accrual of benefit purposes) preceeding a participants eligibility to elect to receive immediately benefits which are not reduced on account of his age or service:

The annual rate of accrual for any plan year may not be greater than 133⅓ percent of the accrual rate for any other plan."

In general, this rule will provide a constraint on differentials in the rates at which benefits are accrued in various stages of participants total service under a plan. It is the intention that both "backloading" (ascribing a greater weight to later years of service than to earlier years) as well as "frontloading" (ascribing a greater weight to earlier years than to later years) be constrained by application of the 133⅓ percent limit.

In recognition of certain situations where the application of the rule needed to be modified, the bill provides that any "frontloading" in any of the first ten years of service (for benefit accrual purposes) in relation to another year within the first ten or in relation to a year subsequent to the tenth will be permitted. In addition, prospect plan amendments will be treated as being in effect for all other plan years in applying the rule.

The purpose of the limitation on "backloading" is to prohibit a potential mechanism for avoiding the desired and intended effect of the minimum vesting standards in Part 2 of the bill. It would be possible by heavily weighting the later periods of service for accrual purposes to achieve a situation in which little or no benefits would be provided those who terminated service subsequent to vesting but prior to completing twenty or thirty years of service. The "frontloading" constraint is designed to prevent the alternative rule provided in Section 205 (b) (2) from being utilized as a device to spread the accrual period beyond 33⅓ years, except in those cases where all years prior to, what in effect is the earliest normal retirement age, are credited for accrual of benefit purposes.

For purposes of making the loading calculation, it will be assumed that compensation, social security benefits, cost of living adjustments, investment per-

formance (where relevant), and all other relevant factors used to compute plan benefits will remain constant.

In the case of plans which provide for early retirement, for example, "30 and out" plans, or plans which allow retirement at age 55 after 20 years of service, the employee who meets the conditions for early retirement may receive a much greater benefit in terms of value than the employee who fails to meet the early retirement conditions. For example, if there were a plan which had a normal retirement age of 65, and an early retirement age of 55, with 30 years of service, and an annual benefit accrual of one percent of compensation, subject to a 30 percent of compensation ceiling, an employee who began work at 25, and retired at 55, would receive a benefit of 30 percent of compensation each year thereafter; but, if the employee left his job at age 54, he would receive a benefit of 29 percent a year which was not payable until age 65.

The committee believes it is desirable not to discourage early retirement plans, accordingly the accrued benefit computation shall be made, for the purposes of the bill, only with regard to the benefit payable at the normal or regular retirement age. The value of any benefit payable under a plan prior to that age may be disregarded.

Changes in vesting schedule.—Under the bill, if a plan is amended in a manner which changes its vesting schedule, each person who is a participant in the plan on the date the amendment is adopted (or is a participant in the plan on the amendments effective date) is to continue to vest his accrued benefits at no less than the rate at which those benefits had been scheduled to be vested under the preamendment vesting schedule. This is to apply both to accrued benefits from preamendment service and to subsequent accrued benefits, and is to apply whether or not the participant had any vested benefits at the time of the amendment. The application of this rule may be illustrated by the following example: Suppose that A is a participant in a plan which follows the minimum requirements of the graded vesting schedule and that A has completed 4 years of service on the amendment date. The amendment provides that the plan is to vest under the minimum requirements of the 10-year 100-percent vesting schedule. Under this rule, at the end of A's next (fifth) year of service, he is to be 25 percent vested in his accrued benefits, as he would have been had the amended vesting schedule not been adopted. This vesting percentage is to be increased by 5 percentage points for each of the next 5 years, as under the minimum requirements of the graded vesting schedule. However, at the end of the tenth year of service, A's vesting percentage becomes 100 percent, because that is the higher rate provided under the new vesting schedule. The same vesting percentages would apply in each of the years if the amendment had been to change the vesting schedule in the opposite manner (i.e., from 10-year 100-percent vesting to graded vesting).

Allocations between employer and employee contributions.—In plans where there are both employer and employee contributions, it will be necessary to allocate the accrued benefit between the portion derived from the employer contributions, and the portion derived from the employee contributions. This allocation may have to be made because the employee is always fully vested with respect to amounts attributable to his own contributions but not necessarily with respect to those of the employer. Also, information of this type would be needed if an employee, upon leaving employment, desires to withdraw his own contributions.

In the case of any plan other than a defined benefit pension plan, the accrued benefit derived from the employee's contributions under the bill is the amount in his own separate account. If the employee and employer contributions were not accounted for separately, the employee-contributed portion of the total accrued benefit would be treated as the fraction of the total which is the ratio of employee contributions to total contributions (after taking account of withdrawals).

In the case of a defined benefit pension plan which provides an annual benefit in the form of a single life annuity commencing at normal retirement age (without ancillary benefits), the accrued benefit derived from mandatory employee contributions (which could never be in excess of his total accrued benefit under the plan) would be treated as the total amount of the employee's "accumulated contributions" multiplied by a conversion factor.[7] In general, the conversion factor, which initially is to be fixed at 10 percent for a normal retirement age of 65, is to be used to convert the amount of the accumulated contributions to a single life annuity commencing at normal retirement age. For other normal retirement ages, the conversion factor is to be determined by regulations.

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[7] Voluntary employee contributions are to be treated the same as a separate account.

In determining the employee's accumulated contributions, under the bill, interest on the employee's mandatory contributions is to be compounded annually, initially at a rate of 5 percent (beginning with the first plan year subject to the vesting requirements imposed under the committee bill) to the date when the employee would reach normal retirement age. In addition, any interest accumulated on the employee's contributions (either compounded or simple) in accordance with the terms of the plan, prior to the date when the vesting provisions of the bill first apply to that plan, are to be treated as part of the employee's accumulated contributions. For purposes of this rule, an employee's mandatory contributions include any contributions made to the plan by the employee as a condition of employment, or of participation in the plan, or of obtaining benefits under the plan which are attributable to employer contributions.

The bill authorizes the Secretary or his delegate to adjust the conversion factor, and the assumed rate of interest on employee contributions, on a prospective basis, from time to time, as may be appropriate, but requires him to give at least one year's notice of any such action. The adjustment in the interest rate would be made by comparing the long-term money rates and investment yields for a 10-year period ending at least 12 months prior to the year in which the adjustment would first apply, with the corresponding rates and yield for the 10-year period from 1964 through 1973.[8]

The committee anticipates that the Secretary, in determining money rates and investment yields, will use a composite of a number of indicators. For example, one possible approach might be to give equal values to the divided yields of the Dow-Jones Industrial Average and the Standard and Poor's 500-Stock Average, and to the interest rates of Barron's or Moody's highest-rated bonds and United States Treasury long-term obligations. This composite, for the 1964–1973 base period, would be set at 5, and the interest rate in the future would be determined by the Secretary's comparison of this composite for the base period, with the same composite for the then most recent 10-year period. It is contemplated that this interest rate will be adjusted less often than annually, and that due regard will be given to the impact of any such adjustment on existing plans.

Plan termination.—Under present law, all accrued benefits in a qualified pension plan must become fully vested (to the extent then funded) in the event of a termination, or the complete discontinuance of contributions under a pension plan. This rule will no longer be necessary with respect to discontinued contributions, because the committee bill now provides for an excise tax on under-funding. Employers whose plans are subject to the funding requirements of the committee bill cannot terminate their plans merely by discontinuing contributions, since the employers continue to remain liable for the required contributions.[9] However, the committee bill makes clear that this rule of full immediate vesting is still to apply in the case of a termination, or a partial termination. (Examples of a partial termination might include, under certain circumstances, a large reduction in the work force, or a sizable reduction in benefits under the plan.) Moreover, even after the plan has terminated, the employer is still under an obligation to pay the required funding of the plan through the date of termination and these make-up amounts (if any) are to be taken into account in determining the accrued liabilities which may become vested upon termination.

Class year plans.—A class year plan is a profit-sharing or stock bonus plan which provides for the separate vesting of employee rights to contributions (or rights derived from contributions) to a plan on a year-by-year basis and the withdrawal of these amounts on a class-by-class basis as they mature. The minimum vesting requirements of the bill applicable to a class year plan are satisfied under the bill if the plan provides for 100-percent vesting of the benefits derived from employer contributions within 5 years after the end of the plan year for which the contributions were made. A separate rule is needed for class year plans since they are structured differently than most other types of plans. The 5-year full vesting rule provided in this case by the committee bill assures an employee who terminates his employment under a class year plan that he will not forfeit his rights to more than 4 years of employer contributions.

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[8] Plans which are not subject to the funding requirements (e.g., profit-sharing plans, church plans, and government plans) can be required to provide vesting of employee benefits (to the extent funded) if contributions are completely discontinued.

[9] In the case of a multiemployer plan the Secretary or his delegate may provide by regulations for the situation where all the employers of the terminated plan did not contribute at the same rate or on the same basis.

Recordkeeping requirements.—To carry out the intent of the vesting provisions (primarily those involving intermittent employment), the employer would be required to keep records of the years of service of his employees and the percentage of vesting which the employees had earned, together with any additional information required by the Secretary in order to determine the employee's benefits. In the case of a multiemployer plan, the employer would furnish the required information to the plan administrator (who would be required to maintain the records), in accordance with regulations.

Failure to maintain or furnish the required records would result in a civil penalty of $10 for each employee with respect to whom the failure occurs, unless it is shown that the failure is due to reasonable cause. The committee expects that the necessary records will be retained by employers for at least 6 years following a break in service. After that, the employee could still establish his right to vesting based on prior service, but the burden of producing the evidence would shift to the employee.

In addition, the Social Security Administration is to be informed, in a time and manner to be prescribed under regulations, when an employee terminates his service prior to retirement with vested benefits.[10] This information, in turn, will be supplied to plan participants and beneficiaries upon request, and when the individual applies for social security benefits. This provision should minimize the danger that vested rights may be lost because a participant is unaware that he is entitled to receive a pension. (Regulations will provide for the situations where adequate records are not available for periods before the effective date of bill.)

Under the bill, the "plan administrator" would generally be the person so designated under the plan or, if there were no designation, the employer or organization who maintained the plan.

Variations.—In the case of any plan, the bill (in sec. 501.) permits the Secretary to prescribe an alternative method (often referred to as a "variance") of satisfying the vesting schedules and accrued benefit requirements with respect to benefits attributable to employer contributions, if it is established to his satisfaction that rigid application of the requirements of the bill would increase the costs of the plan to such an extent that there was a substantial risk that the plan would be terminated, or there would be a substantial reduction in the benefits under the plan, or in the compensation of the employees. Such a variance could also be granted to prevent an undue administrative burden in connection with the plan.

The rules for such variances (which may be considered by the Secretary either on his own motion or on petition by the plan administrator, and only with appropriate notice and hearing safeguards) are described in detail below (in the funding portion of this general explanation).

Joint and survivor annuities.—Under present law, there is no requirement that a qualified employee plan must provide for survivor annuities. This can result in a hardship where an individual primarily dependent on his pension as a source of retirement income is unable to make adequate provision for his spouse's retirement years should he predecease her. To correct this situation, the committee's bill requires that if a plan provides for a lifetime annuity then, where the participant is married on the annuity starting date, the plan must provide for a joint and survivor annuity (or an arrangement, such as supplementary benefits for the participant's spouse which has essentially the same effect) where the survivor annuity is at least half of the annuity payable to the participant during the joint lives of the participant and his spouse.

The plan may provide that the participant has a reasonable period (as prescribed in regulations) before the annuity starting date during which he may elect in writing—after having received a written explanation of the terms and conditions of the joint and survivor annuity and the effect of such an election—not to take the joint and survivor annuity. The bill does not require the plan to "subsidize" the joint and survivor annuity. Consequently, such a joint and survivor annuity could be less (in terms of dollars per annuity payment) than the single life annuity. Also, the bill does not forbid plans from making reasonable actuarial adjustments to take appropriate account of the possibility that otherwise total costs would be increased because of adverse selection.

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[10] In the case of a multiemployer plan the information would generally be furnished only when the employee left the plan; there would be no need to notify the Social Security Administration merely because the participant changed employers. Also, because of the large "turnover" rate in multiemployer plans, your committee contemplates that the regulations will provide that in the case of a multiemployer plan, no reporting is required for a reasonable period of say, 2 years after the employee has last performed service under the plan.

The reduction permitted on the basis of actuarial equivalence need no involve a variety of reductions dependent on the life expectancy of each participant and of the participant's spouse. A uniform reduction or a simplified schedule of reductions will fulfill the intent of this provision if it can be established to provide actuarial equivalence in the case of the average participant.

The joint and survivor annuity requirements are to apply only to plans to which the new vesting requirements of this bill are applicable. In other words, the joints and survivor rules would not apply to government plans, they would not apply to church plans unless an election had been made to come under the new rules, and the effective date in the case of existing plans would be delayed to the same extent that the effective date is delayed generally with regard to the new vesting provisions. Of course, the plans not subject to these provisions (or to which the new provisions would not apply for some years into the future) may offer joint and survivor options if they wish to do so. The mandatory provisions of the bill will not apply unless that participant's annuity starting date is on or after the effective date with regard to that plan and would not apply unless that participant was an active participant in the plan on or after that effective date.

Plan mergers.—The committee bill contains a provision to ensure that the rights of participants are fully protected in the event of plan mergers. Under this provision, which applies to any plan merger occurring after October 22, 1973, each participant must be entitled to receive a benefit immediately after the merger (determined as if the plan then terminated) which has not less than the value of the benefit he would have been entitled to receive immediately before the merger (determined as if the plan then terminated). Moreover, the funding of his accrued benefit must be at least as adequate after the merger as it was before the merger. Without such a provision, the committee was concerned that the rights of plan participants might be diluted in some instances, as the result of plan mergers. As a further safeguard, the bill requires that in the case of any plan merger which occurs after enactment, the plan administrator must give 30 days notice, including an actuarial statement indicating that the requirements of the bill have been met.

Alienation.—To further ensure that the employee's accrued benefits are actually available for retirement purposes, the committee bill also contains a provision requiring that plan to provide that benefits may not be assigned or alienated. (Of course, this provision is not intended to prevent the transfer of benefit rights from one qualified plan to another.)

Nevertheless, a plan will be permitted to provide for voluntary and revocable assignments (not to exceed 10 percent of any benefit payment).

Your committee understands that many plans provide for payments of premiums for supplemental hospital benefits (under the Social Security Act) and this provision is intended to specifically permit such an alienation. Your committee determined to permit reasonable flexibility to extend this practice to other types of payments in the future, concluding that the safeguards (revocability, 10-percent limit, and regulations) would be sufficient to prevent abuses which might endanger the right of future retirees to be secure in their retirement incomes.

This provision is not intended to interfere with the current practice in many plans of using vested benefits as collateral for reasonable loans from the plans, where the "prohibited transactions" provision of present law and other fiduciary requirements are not violated.

Benefits of terminated participants.—Protection is given to retired individuals and individuals who are separated from the service of the employer against reductions in private plan benefits when social security benefit levels increases.

Present law under administrative practice provides that qualified plans may not use increases in social security benefit levels to reduce the benefits that they pay where the employees concerned are retired and already receiving integrated plan benefits. The bill codifies this treatment for retired persons. It also extends the prohibition against reducing plan benefits where social security benefit levels are increased to cases where the individuals concerned are separated from service prior to retirement and have deferred nonforfeitable rights to plan benefits. This provision is effective for increases in social security benefits which take place after the date of enactment or on the date of the first receipt of plan benefits or the date of separation from service (whichever is applicable) if that date is later.

These changes do not affect the ability of plans to use the integration procedures to reduce the benefits that they pay to individuals who are currently covered when social security benefits are liberalized. Your committee, however, believes that such practices raise important issues. On the one hand, the objec-

tives of the Congress in increasing social security benefits might be considered to be frustrated to the extent that individuals with low and moderate incomes have their private retirement benefits reduced as a result of the integration procedures. On the other hand, your committee is very much aware that many present plans are fully or partly integrated and that elimination of the integration procedures could substantially increase the cost of financing private plans. Employees, as a whole, might be injured rather than aided if such cost increases resulted in slowing down the growth or perhaps even eliminated private retirement plans.

In view of the serious issues involved in the integration of private plans with the social security system, your committee defers to the planned considered of this matter by the Committee on Ways and Means.

Payment of benefits.—To ensure that a participant can reasonably expect to receive his benefits during his retirement years, the committee bill requires a qualified plan (to which the basic vesting provisions apply) to commence payment of benefits to the participant (unless he elects otherwise in writing and this election is permitted by the incidental death benefits rule) not later than the 60th day after the close of the plan year in which the latest of these events occurs: (1) the partcipant attains age 65; (2) the 10th anniversary of the time the participant commenced participation in the plan; or (3) the participant terminates his service with the employer. This requirement is set in terms of the end of a plan year, rather than the date on which the event occurs, in order not to disrupt unduly the administrative practice of plans that begin retirement benefits for all new retirees on the same date. The second of the above alternative (the 10th anniversary of commencement of service) is designed to permit a defined benefit plan to have an adequate period of time in which to fund the benefit for a person who first enters the plan at a relatively late age. The third of the above alternatives (termination of service) has been added in recognition of the fact that these benefits are designed primarily to provide for the participant's retirement.

Effect of withdrawal of employee contribution.—At the present time, many employee plans require employees to make contributions in order to receive employer contributions (or benefits to be funded by the employer). Some such plans permit employees to withdraw their contributions (or the benefits derived from their contributions) but impose as a "penalty" for such withdrawal the forfeiture of some or all of the benefits derived from employer contributions. Where this occurs, the effect is to reduce the retirement protection afforded to the employee. Your committee is not at this point expressing a view as to whether employee contributions or the right to withdraw those contributions are desirable features of retirement plans. However, it does not appear appropriate to provide for forfeitures derived from employer contributions merely because of a withdrawal by the employee. Accordingly, the committee bill specifically requires all qualified plans to forbid forfeitures of nonforfeitable benefits derived from employer contributions solely because of withdrawals by employees of any parts of the benefits derived from the employees' contributions.

This limitation is to apply only to plans to which the new vesting provisions of the bill apply.

Church and government plans, and union-sponsored plans.—Church and government plans (described above under participation and coverage) are exempt from the vesting provisions of the bill but must comply with the requirements of present law in this area (as in effect on the day before enactment) in order to be qualified. Church plans may elect to come under the provisions of the bill and, once made, such an election will be irrevocable.

The committee bill also exempts from the vesting requirements plans which do not, any time after enactment, provide for employer contributions—in other words, union-sponsored plans. Since these plans are, in effect, controlled by the employees for whose benefit they are established, there is no need to impose the vesting requirements of the bill. However, if the plan provides for employer contributions, the mere fact that no such contributions are made (either because the plan is fully funded, or because the employer fails to comply with the funding requirements of the bill, or for some other reason), will not result in an exemption for the plan from the vesting requirement.

Effective dates

These provisions apply generally to plan years beginning after the date of enactment of the bill. Later effective dates (which may vary from 1976 to 1981,

depending on the circumstances of the plan) are provided in the case of plans in existence on January 1, 1974, in order to afford such plans adequate opportunity to adopt any amendments needed in order to conform to the new requirements resulting from this bill. The effective date provisions are described more fully above, in the discussion of participation and coverage requirements.

Part 3. Funding

Present law

Pension plan liabilities[1] generally are estimates and are based on actuarial calculations. Consequently, all actuarial methods, factors, and assumption used must, taken together, be reasonable and appropriate in the individual employer's situation. When applying for a determination letter from the Internal Revenue Service that a plan is qualified, the actuarial methods, factors, and assumptions used generally must be reported to the Service, along with other information to permit verification to the reasonableness of the actuarial methods used. Changes in actuarial assumptions and methods must be reported annually to the Service.

Actual experience may turn out to be different from anticipated experience, changing the estimated pension liabilities (and needed contributions requiring adjustments in assumptions and thereby resulting in experience loss or experience gain. Depending on the circumstances, the contributions needed to make up experience losses may be made currently or may be added to past service costs and amortized.[2] Similarly, depending on the circumstances, experience gains may reduce the plan cost currently or reduce costs under one of the spreading methods used to determine the amounts deductible.

The value of the plan assets also affects the amount of contributions. Under administrative rulings, assets may be valued by using any valuation basis if it is consistently followed and results in costs that are reasonable.

If an employer does not make the minimum required contributions to a qualified plan, under administrative practice the deficiency may be added to unfunded past service costs. However, the plan also may be considered terminated, and immediate vesting of the employees' rights, to the extent funded, may be required.

Under the bill, normal costs of covered plans are to be currently funded. Additionally, newly-established unfunded past service liabilities of covered plans generally are to be amortized over no more than 30 years, although existing past service liabilities generally are to be amortized over no more than 40 years. In addition, experience deficiencies generally are to be amortized over no more than 15 years. (Generally, longer periods are to be allowed for multiemployer plans.) Alternatively, if funding requirements are higher under a second general standard which is based on accrued vested liabilities, this standard is to apply in lieu of the rules set forth above. Under this standard, accrued vested liabilities are determined, as also are the value of the plan's assets. To the extent the vested liabilities exceed the value of assets, the first year's payment under a 20 year amortization schedule (principal and interest) of unfunded vested liabilities is to be paid in the current year. A new determination with respect to the applicability of this second general standard is to be made in each of the succeeding years, starting with a new 20 year period. Of course, pension liabilities may be amortized at a faster rate than under the minimum required standard, if desired.

Your committee recognizes that the amount required to fund a pension plan is in large part determined by actuaries' estimates of future plan costs, which in turn are based on the actuarial methods and assumptions used for each plan. Consequently, the determination of the amount of contributions that must be made to a plan to adequately fund the plan benefits is significantly affected by the professional decisions of the plan's actuary. The bill provides that actuaries enrolled to certify plan costs and report the actuarial methods and assumptions used for each pension plan. Your committee also contemplates that the Secretary

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[1] In determining liabilities, an employer must take into account factors such as the basis on which benefits are computed, expected mortality, interest, employee turnover, and changes in compensation levels.

[2] Under the "10-percent" deduction limit (sec. 404(a)(1)(C) of the Code), if the experience loss occurs using the same assumptions as previously, the additional contributions, subject to certain restrictions, may be deducted currently. If the deficit results from a loss in asset values or revaluation of liabilities using more conservative assumptions the deficit may be added to past service cost. Rev. Bull. 57-550, 1957-2 C.B. 266.

may establish an actuarial advisory board to provide assistance in setting standards for enrolling actuaries, setting guidelines for actuarial assumptions and in other pertinent matters.

Explanation of provisions

Minimum funding rules, in general.—Your committee's bill establishes new minimum funding requirements for qualified plans so these plans will accumulate sufficient assets within a reasonable time to pay benefits to covered employees when they retire. Of course, contributions generally may be greater than these minimum requirements if the employer so desires. The new funding rules generally are to apply to any plan year after the effective date of the plan. However, the new requirements generally are not to apply to profit-sharing or stock bonus plans, governmental plans, certain church plans, plans with no employer contributions, and certain insured plans. Once a plan or trust has been covered the minimum funding requirements will apply, and they are to continue to apply to the plan or trust, even if it later loses its qualified status. If a plan loses its qualified status, the deduction rules for nonqualified plans are to apply even though the minimum funding standard continues to apply to the plan.

Generally, under the new funding requirements the minimum amount that an employer is to contribute annually to a defined benefit pension plan includes the normal costs of the plan (as under current law), plus amortization of past service liabilities, experience losses, etc. The minimum amortization payments required by the bill are calculated on a level payment basis—including interest and principal—over stated periods of time. Generally, initial past service liabilities and past service liabilities arising under plan amendments are to be amortized over no more than 30 years (40 years for the unfunded past service liabilities on the effective date of these new funding rules, in the case of existing plans), and experience losses are to be amortized over no more than 15 years. However, generally experience gains and losses need not be calculated more than every three years. With respect to multiemployer plans, past service liabilities generally may be amortized over no more than 40 years, and experience losses over no more than 20 years. However, an alternative funding standard, based on contributing a portion of the unfunded nonforfeitable liabilities under the plan, is to be used if it brings a higher level of funding in any year than would the basic minimum funding standard. This alternative standard is to apply both to multiemployer and other plans.

For money purchase pension plans, the minimum amount that an employer is to annually contribute to the plan is the amount that must be contributed for the year under the plan formula. For purposes of this rule, a plan (for example, a so-called Taft-Hartley plan) which provides an agreed level of benefits and a specified level of contributions during the contract period is not to be considered a money purchase plan if the employer or his representative participated in the determination of the benefits. On the other hand, a "target benefit plan" is to be treated as a money purchase plan for purposes of the minimum funding rules.

Under the new funding rules, generally each covered plan is to maintain a new account called a "funding standard account." The account also is used to assure that a plan which has funded more than the minimum amount required is properly credited for that excess and for the interest earned on the excess. Similarly, where a plan has paid too little, the account is to assist in enforcing the minimum funding standard.

Each year the funding standard account is to be charged with the liabilities which must be paid to meet the minimum funding standard. Also, each year the funding standard account is to be credited with contributions under the plan and with any other decrease in liabilities (such as amortized experience gains). If the plan meets the minimum funding requirements at the end of each year, the funding standard account will show a zero balance (or a positive balance, if the employer has contributed more than the minimum required). If the minimum contributions have not been made, the funding standard account will show a deficiency (called an "accumulated funding deficiency").

The funding rules established by the bill are in addition to the rules which provide the maximum deduction limits for contributions to a plan. However, generally a contribution that is required by the minimum funding rules is to be deductible currently. In addition, the rules governing the maximum limitations are to be changed to make them more compatible with the minimum funding requirements.

Normal costs and initial past service liabilities.—Your committee's bill specifically continues the requirement of present law that the normal costs

(arising from current liabilities) of a defined benefit pension plan must be currently funded. In addition, in order to give assurance that a plan will have sufficient assets to pay benefits, the bill establishes new minimum requirements for funding accrued past service liabilities.

In general, the bill requires that an employer's contributions to a defined benefit pension plan for initial past service liabilities is to be sufficient to amortize these liabilities, on an accrued basis, over no more than 30 years from the date that the plan is established (40 years for multiemployer plans).

For a plan in existence on the date of enactment, unfunded past service liabilities existing as of the effective date of the new funding provisions applicable to the plan are to be treated as initial past service cost to come under the minimum funding rule and are to be amortized over no more than 40 years. This longer period will allow existing plans sufficient time to make the transition into the new funding rules. Since existing plans may have to be amended to meet the new vesting and participation requirements of the bill (and those amendments would affect plan costs), the 40-year amortization period is to be allowed for past service liabilities existing as of the plan year for which the bill becomes effective, including those liabilities arising from amendments made to meet the new vesting and participation requirements, even if those amendments are made retroactive after the effective date respecting the plan. However, the 40-year amortization is allowed only with respect to liabilities arising from retroactive amendments that are made by the time the employer must file his tax return for his taxable year in or with which the first plan year to which the new minimum funding requirements apply ends. In the case of multiemployer plans, such retroactive amendments may be made within two years after the close of the first plan year to which the new minimum funding requirements apply.

The minimum funding requirement for past service liabilities in effect is analagous to payment over 30 years of a loan secured by a home mortgage. It requires contributions to the plan to be made not less rapidly than if made on a level payment basis over 30 years, with each payment including both interest and principal. For example, if the past service liability is $1,000,000 at the time a plan is established, the minimum level payment that is to be made each year, for 30 years, to meet the funding requirement (calculated at an interest rate of 6 percent per annum over the 30-year period) is $68,537 per year (assuming contributions are made at the beginning of each year). In addition, the employer would be required to contribute annually to the plan an amount equal to the normal cost of the plan.

The interest rate or rates to be used in calculating the minimum payments for amortization of initial past service liabilities is the same rate or rates as that used in determining plan cost ,at the time the plan is established, or at the time the new funding requirements apply to the plan, in the case of plans in existence on the date of enactment. (Similarly, the interest rate or rates used to amortize past service liabilities arising from amendments, to amortize experience losses, and to amortize contribution waivers also is the rate or rates used to determine plan costs at the time the liability in question first arose.) If the interest rate used to determine plan costs is changed as of a later date in order to conform with experience, the initial amortization schedule of level payments is not to be changed, but the consequent increase (or decrease) in plan costs is to be amortized as an experience loss or gain (treated in the manner described below).

Under your committee's bill, the basic minimum funding rules—both those which apply to all past service liabilities and those which apply to normal costs—require funding on the basis of accrued, (that is, both vested and nonvested) liabilities, not merely on the basis of vested liabilities. The use of accrued liabilities for this purpose appears appropriate because it generally provides the most orderly and comprehensive method for funding the plan's entire liabilities. In this way, gradual payments will be made to fund all of a plan's present liabilities, including the presently nonvested accrued liabilities which are expected to vest in the future. Moreover, funding on the basis of accrued liabilities tends to produce somewhat more rapid funding, and as a result generally provides more protection to plan participants.

Generally, the 30-year amortization requirements initially add only moderately to an employer's funding cost under present law. This is true because under present law interest on unfunded accrued past service liabilities (which accounts for the bulk of the level amortization payments required under the bill in the early years) must be contributed to a qualified pension plan. Therefore, your commit-

tee believes that 30-year amortization will not hamper an employer in starting a new plan, or in adding plan amendments, that includes past service liabilities. Similarly, the 40-year amortization will not unduly increase present costs of an employer with an existing plan.

Plan amendments.—The bill provides that past service liabilities created by plan amendments are to be treated generally in the same way as initial past service liabilities of new plans for purposes of the minimum funding rules. Under the minimum funding rules these liabilities are to be amortized separately over a 30-year period (40 years for multi-employer plans) from the date the amendment is adopted if this precedes the date on which benefits increase. For example, if the unfunded accrued past service liability added by an amendment is $100,000, the employer generally is to amortize this increase in past service liability in 30 annual payments of $6,854 (assuming an interest rate of 6 percent and that contributions are made at the beginning of each plan year).

Plan amendments which decrease past service liabilities (by decreasing plan benefits) are treated consistently with plan amendments increasing benefits; that is, decreases in past service liabilities from plan amendments are to be amortized over 30 years (40 years for multi-employer plans). Consequently, the minimum amortized annual payments to fund past service liabilities that must be contributed by an employer who decreases plan benefits generally will be less, in any one year, than amortized payments required for an employer who started out with a plan providing the same (lower) benefits. (Of course, a decrease in benefits will often also decrease the normal cost which must be funded annually.)

Under the bill plan amendments may be made on a retroactive basis, to a limited extent, without the approval of the Secretary. In this case, plan amendments may be made after the close of a plan year and yet apply to that year if they are made within the time for filing the employer's return (including extensions) for the employer's taxable year with or within which that plan year ends. (Since a single employer's plan year is not a workable standard for multiemployer plans, with respect to multiemployer plans, an amendment may be made within two years after the close of the plan year.) It is expected that this provision may be used to decrease plan liabilities where an error has been made in calculating the amount of benefits that can be provided and funded under the minimum standard. However, amendments made under this provision are not to decrease accrued benefits of any participant determined as of the beginning of the first plan year to which the amendments applies.

This provision also may be used with respect to increases in plan liabilities. As discussed above, to the extent that past service liabilities are added by plan amendments that are effective as of the effective date of the new funding requirements for existing plans, and are made within the time allowed for retroactive amendment, these past service liabilities may be amortized over a 40-year period.

Your committee also recognizes that in certain cases where plan participants would otherwise suffer substantial adverse consequences, it may be appropriate for plan benefits to be retroactively reduced beyond the limit described above. Therefore, the bill provides that, on application of the plan administrator (or on motion of the Secretary) and after proper notice to all interested parties and a public hearing where interested parties are provided adequate opportunity to be heard, the Secretary may approve a retroactive decrease in plan benefits (whether or not nonforfeitable). However, before such approval is granted, the Secretary must make findings of fact that if the amendment is not approved, there would be a substantial risk that the plan would not be continued, a substantial risk of a curtailment of benefits (more than the curtailment that would occur with approval of the amendment), or a substantial risk that current levels of employee compensation would be substantially curtailed. Furthermore, the Secretary must find that failure to approve the amendment would be adverse to the interests of plan participants in the aggregate. Any amendment approved by the Secretary is to be retroactive only for such limited time period, and is to decrease benefits only to such extent, as is necessary or appropriate to carry out the purposes of the bill and as is necessary or appropriate to provide adequate protection to plan participants and beneficiaries.

Experience losses and gains.—During the course of a pension plan, actual plan experience may turn out to be poorer than anticipated. For example, the value of plan assets may turn out to be less than expected. Where this occurs, there generally will be an "experience loss" which must be funded if the plan is to be

able to pay the benefits owed.[5] Since experience losses relate to previously established plan liability, they may indicate that the plan has become underfunded in relation to the required minimum for funding normal costs and past service liabilities. Consequently, your committee believes it is reasonable to require faster funding for these amounts than for newly established past service liabilities. The bill provides that under the minimum funding rules these losses are to be amortized (with level annual payments, including principal and interest) over not more than 15 years (20 years for multi-employer plans) from the date the loss is determined. Your committee believes that a 15-year amortization period generally will provide adequate funding of experience losses, while at the same time protecting employers from potentially severe financial burdens arising from experience losses created by uncontrollable events.

Your committee understands that the 15-year period, while protecting the financial security of plans, generally will not discourage pension plans such as "final average pay plans" which increase accrued benefits as pay increases, and thus are generally desirable from the employee's view. Additionally, it is believed that under the 15-year requirement employers will not be subject to unnecessary financial burdens where they have experienced losses beyond their control.

A pension plan also may have experience gains during the course of its operation. These gains would occur because experience is more favorable than anticipated. For example, the value of plan assets may be greater than expected. The bill treats experience gains symmetrically with experience losses, so that gains are spread over 15 years (20 years of multi-employer plants) from the date they are determined.

The bill provides that changes in accrued plan liabilities resulting from changes in actuarial method or assumptions are to be treated as experience losses (or gains). Additionally, the bill provides that changes in plan cost that result from changes in the Social Security Act (or other retirement benefits created by State or Federal law) or in the definition of wages under section 3121 of the Internal Revenue Code are treated as experience losses (or gains). It is expected that the actuarial assumptions for plans affected by social security, etc. now generally will allow for such changes since to a subtantial extent these changes may be anticipated. In this circumstances, if changes in plan cost from changes in social security were not treated as experience gains to be amortized, employers with plans that did not properly allow for social security changes might be able to, upon increases in social security payments, substantially decrease current contributions and thereupon plan participants would receive correspondingly less production.

Your committee recognizes that plan experience rarely conforms to anticipation on a year-by-year basis, but that experience often is close to expectations over a longer period. Therefore, to smooth fluctuations in funding required by amortization of experience gains and losses, the bill provides that experience gains and losses are to be determined at least every three years and generally need not be determined any more frequently. However, under the bill the Secretary may provide by regulations that experience gains and losses are to be determined more frequently than every three years, in particular cases. Your committee expects that this generally will be required only for plans that show an unusual need for frequent calculations, such as for plans with relatively high claims for payment with respect to assets available. (Under the bill, regulations requiring more frequent determinations of gains and losses are to be effective with respect to plan years beginning after December 31, 1975, only if approved by the Secretary of the Treasury.) This is to ensure that the rules of the Internal Revenue Service and the Department of Labor with respect to frequency of determination of gains and losses are similar. It is anticipated that similar regulations prescribed by the Secretary of the Treasury are not to be effective for those years until approved by the Secretary of Labor.

Additional funding standard.—Your committee recognizes that certain plans with a high proportion of nonforfeitable benefits in relation to assets available may not be adequately funded under the basic minimum funding standard.

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[5] However, the bill provides that experience gains and losses are to be determined under the funding method used to determine costs under the plan. It is understood that some funding methods, such as the "aggregate method," do not provide experience gains or losses, but differences between anticipated and actual experience are subsumed in the basic funding requirements of the method. If a plan were to use such a funding method, it is anticipated that the plan would not need to separately amortize experience gains or losses.

Therefore, an additional minimum funding standard is provided in the bill which is to be used in any year in which it would require a greater amount of plan contributions than would the basic minimum funding standard.

Under the additional funding standard, the plan is to determine unfunded nonforfeitable liabilities (total nonforfeitable liabilities less plan assets). When the amount required to amortize these unfunded nonforfeitable liabilities over a period of 20 years (including principal and interest) is to be calculated. The amount to be contributed is the first year's payment under that amortization schedule. This calculation is to be repeated each year (on the basis of a new 20 year period) in which the additional funding standard would require a higher contribution than the basic standard. Since the amount of unfunded nonforfeitable liabilities generally will decrease with contributions, in succeeding years the payment under the additional funding standard generally will be less than the prior year's payment. Therefore, this is a declining balance method of funding.

Your committee anticipates that the amount of unfunded nonforfeitable liabilities generally will be reported on an annual basis, and, thus, the basic figures required for this calculation will be readily available to most plans. Additionally, your committee understands that this additional standard will apply infrequently but that it will bring about necessary additional funding in the few cases where it will apply.

Your committee recognizes that in some situations it would be inappropriate to require plans to meet the basic funding requirements. To meet this problem, the bill provides that the Secretary may prescribe an alternate funding method for a plan, determining the annual contributions and credits to the funding standard account. The Secretary may also prescribe, under the variance procedure, alternative methods for satisfying the requirements of the bill with respect to changing the multi-employer plan's funding method or plan year.

A variance may be prescribed by the Secretary only after he holds a public hearing on the plan in question and allows interested persons, including participants and beneficiaries of the plan an opportunity to present their views. In this regard, a variance cannot be granted unless the Secretary is satisfied that all plan participants and other interested persons have received adequate notice from the plan administrator prior to any public hearing on the variance. If a variance is to be granted, the Secretary, after a public hearing, is to make a finding that the basic funding requirements would increase plan costs to such an extent that there would be a substantial risk that the plan would be terminated, that benefits under the plan would be substantially decreased without the variance, that (if the plan were continued at its current level) employee compensation would be substantially decreased, or that unreasonable administrative burdens would be imposed on the plan under the basic funding requirements. Additionally, the Secretary is to make a finding that the basic funding requirements (or discontinuance of the plan) would be adverse to the interests of plan participants in the aggregate. A variance is to be allowed by the Secretary only for such a limited period as is necessary or appropriate to carry out the purposes of the bill, and to provide adequate protection to plan participants and beneficiaries.

The funding standard account.—As previously indicated, the bill requires that each covered plan must maintain a funding standard account. The purpose of this account is to facilitate the determination of whether a plan has met the minimum funding standard. A plan will meet the minimum funding requirements only if, as the end of each plan year, the account does not, on a cumulative basis, have an excess of charges for all plan years over credits for all plan years. The account is to be charged each year with the normal costs for that year and with the minimum amortization requirements for past service costs, experience losses, and waived contributions for each year. On the other hand the account is to be credited with the contributions made for the year, with amortized portions of cost decreases, resulting from plan amendments and experience gains, and with any waived contributions.

To determine if the plan meets the minimum funding standard, the funding standard account is to be reviewed as of the end of each plan year. However, the bill provides that an employer may contribute to a plan after the end of his taxable year and up to the date of filing his tax return, and these contributions may relate back to his previous taxable year. Thus, for example, where the plan and taxable years are the same this will allow payments made within this time to relate back to the previous plan year for purposes of the minimum funding requirements and the funding standard account. This should provide an

employer with sufficient time to reconcile the funding standard account and make the contributions needed to avoid underfunding.

If the account has a positive balance at the end of the plan year, the employer will have contributed more than the minimum funding standard requires. Since income will be earned on amounts in the plan, the bill provides that this positive balance is to be credited with interest[6] which will reduce the need for future contributions to meet the minimum funding standard. On the other hand, if the funding standard account has a deficit balance, the employer will have contributed less than required under the minimum funding rules, and the deficiency is to be charged with interest. Interest is charged in this case because the deficiency will become larger over time by the amount of income the plan would have earned had the minimum requirements been complied with and therefore the employer will have to pay more to the plan than just the amount he failed to contribute in the plan year. (A plan in existence on the date of enactment will start with a zero balance in its funding standard account on the effective date for the new funding rules applicable to the plan. Similarly, a newly-established plan will start with a zero balance in its funding standard account.)

An example of the operation of the funding standard account for a single employer defined benefit pension plan is described below.

It is assumed that in 1978 the plan is established with a past service liability of $1 million and a normal cost of $70,000. The interest rate used to determine liabilities under the plan for 1978 and for all years in this example is 6 percent per year. It is also assumed that this plan chooses to determine experience gains and losses on an annual basis, rather than every three years, as is generally allowed under the bill. In the first plan year, the employer contributes $138,537. The plan's funding standard account for 1978 will be as follows:

Credits: Employer contributions	$138, 537
Charges:	
Normal cost	70, 000
Amortization—initial past service cost (30 years)	68, 537
Total	138, 537
Net balance	0

In the year 1979 the plan is amended (effective for 1979), increasing past service liabilities by $100,000. The plan's normal cost for benefits as amended is $75,500. There is a net experience gain of $5,000 over the prior year. In this year, the employer's contribution is $165,975. The plan's funding standard account for 1979 will be as follows:

Credits:	
Employer contributions	$165, 975
Amortization—experience gain (15 years)	486
Total	166, 461
Charges:	
Normal cost	75, 500
Amortization—initial past service liability	68, 537
Amortization—past service liability from amendment (30 years)	6, 854
Total	150, 891
Balance	15, 570
Interest on balance	[1] 934
Net balance	16, 504

[1] This assumes that all amounts other than interest are charged and credited at the beginning of the year.

[6] The interest rate or rates to be used to charge or credit the accounts are to be consistent with the rate or rates used under the plan to determine costs and are to be charged or credited in accordance with regulations.

In 1980 the normal cost of the plan is $76,200. There is an experience loss for the preceding year of $10,000. The employer contributes $135,572. The plan's funding standard account for 1980 will be as follows:

Credits:	
Employer contributions	$135,572
Amortization—experience gain	486
Total	136,058
Charges:	
Normal cost	76,200
Amortization—initial past service liability	68,537
Amortization—past service liability from amendment	6,854
Amortization—experience loss (15 years)	971
Total	152,562
Net	−16,504
Balance from previous year	16,504
Balance	0
Interest on balance	0
Net balance	0

In case the additional funding standard applies, the funding standard account is to be charged with the excess of the amount to be contributed under the additional funding standard over the amount to be charged as normal cost, amortization of past service costs and experience losses, less the amortized credits for plan amendments that decrease liabilities and for experience gains. (However, to ensure the account is properly maintained, these amounts also are to be charged and credited to the account in this case.)

The funding standard account—special rules—combining and offsetting amounts to be amortized.—Your committee recognizes that the amortization rules may require a plan to keep accounts for amortizing a number of different items. While the amortization charges and credits to be entered in the funding standard account for any one year will net out to a single figure, some may prefer not to maintain a number of different amortization accounts. Therefore, the bill provides that amounts required to be amortized may, at the taxpayer's discretion, be combined into a single amount to be amortized.

The bill provides, pursuant to regulations to be issued by the Secretary that amounts which are amortizable credits and charges may be offset against each other with the balance to be amortized over a period determined on the basis of the remaining amortization periods for all items entering into the credits or charges, whichever is greater. Also, pursuant to regulations, amortizable credits (or amortizable charges) may be combined into one credit or one charge to be amortized over a period determined on the basis of the remaining amortization periods for all items entering into the combined amount. It is expected that if a plan elects to offset or combine amounts to be amortized, this election will apply to all amounts (both charges and credits) required to be amortized for the year of election.

An example of the netting and combining of amortizable amounts by a single employer plan is described below.

It is assumed that the plan has no past service cost. It is also assumed that the plan chooses to determine experience gains and losses on an annual basis rather than every three years as is generally allowed under the bill. In year 1, the plan has an experience loss of $40.000. In year 2, the plan has an experience gain of $15,000. In year 3, the plan has an experience loss of $10,000. In all these years the plan uses a 5-percent per annum interest rate in computing its plan costs.

The $40,000 experience loss that occurs in year 1 must be amortized over 15 years, requiring annual payments of $3,670. The first payment to amortize this amount is made in year 2.

At the end of year 2 (after one payment of $3,670) the remaining unamortized balance of the $40,000 experience loss is $38,145.[7]

[7] This is based on the assumption of a 5 percent interest charge on the unpaid balance during the year.

The $15,000 experience gain that occurs in year 2 also is to be amortized over 15 years. Alternatively, it may be combined with the remaining experience loss of $38,145, reducing the unamortized loss by ($38,145 minus $15,000) to $23,145. It is expected that under regulations to be issued by the Secretary the balance of $23,145 may be amortized over 14 years (the remaining amortization period of the greater amount), in equal annual payments of $2,227. At the end of year 3 (after one payment of $2,227) the remaining unamortized balance of the netted experience loss and gain is $21,964 (requiring annual payments of $2,227 over 13 years).

The $10,000 experience loss that occurs in year 3 would be amortized over 15 years in equal payments of $918 per year if it were to be separately computed and amortized. On combining this loss with the previous net experience loss, the base for amortization is ($21,964 plus $10,000) or $31,964. It is anticipated that under regulations to be issued by the Secretary of the Treasury this amount may be amortized by 13 annual payments of $3,145 ($2,227 plus $918) and thereafter one payment of $1,780.

Special rules—the full funding limitation.—In some cases, the difference between the total liabilities of the plan (all accrued liabilities including normal cost) and the total value of the plan assets may be smaller than the minimum funding requirement for the year. For example, this could occur where the plan assets had increased substantially and unexpectedly in value. Where the excess of total plan liabilities over assets is less than the minimum funding requirement otherwise determined, your committee believes that an employer should not have to contribute more than the amount of this excess liability, for upon contribution of this amount the plan will become fully funded. As a result, in this case the bill provides that the amount to be charged to the funding standard account (and to be contributed), is to be limited to the difference between the total liabilities of the plan and the fair market value of the plan assets. Since the full funding limitation reduces the amount otherwise required to be contributed to a plan, it appears appropriate to use the lower of fair market value or the value of plan assets as normally determined. (As discussed below, the value of plan assets as normally determined may be greater than fair market value in certain cases and in such situations use of the normal valuation method could inappropriately limit contributions to a plan.)

When the full funding limit applies, the amortization schedule for charges and credits to the funding standard account are to be considered as fully amortized, and these schedules generally are to be eliminated from the calculations under the funding standard account. However, if the plan is amended in later years to increase plan liabilities, a new amortization schedule would be established with respect to this increase in liabilities. For years after the full funding level is reached, the funding standard account will continue to be charged with the normal cost of the plan. Consequently, unless asset values increase correspondingly with the increase in plan liabilities, eventually the full funding limitation will not be applicable and the employer will have to make contributions to the plan to meet the minimum funding requirements.

If the employer fails to make the required contributions in a year in which the full funding limitation is applicable, the excise tax (described below) on underfunding in that year is to be based only on the amount that should have been contributed, given the full funding limitation.

For the purpose of calculating the full funding limitation, the bill provides that plan liabilities (including normal cost) are to be determined under the funding method used by the plan to determine costs for the year, if the liabilities can be directly calculated under this funding method. However, if this cannot be done under the plan's funding method, in order to allow the full funding limitation to apply, the bill provides that the accrued liabilities are to be calculated under the entry age normal method, solely for the purpose of determining the application of the full funding limitation.

Whether the full funding limitation applies generally is to be determined at the end of the plan year, after all plan liabilities for that year have accrued. For purposes of the full funding limitation, the value of plan assets generally is to be determined as of the usual valuation date for the plan. Since, as discussed above, contributions generally can be made to a plan after the end of a plan year and yet relate back to the previous plan year, there should be no timing problem with respect to such year-end calculations.

Special rules—money purchase pension plans.—Generally, the funding standard account for money purchase pension plans is to be charged annually with

the amount that must be contributed for the year under the plan formula, and is to be credited with the amount that is paid. As a result, employers who have these plans must annually make the payments required under the plan.

For purposes of the funding rules, a "target benefit plan" generally is to be treated as a money purchase pension plan. However, a plan (for example, a so-called Taft-Hartley plan) that provides an agreed level of benefits and a specified level of contributions is not to be considered a money purchase pension plan if the employer or his representative participated in the determination of the benefits.

Special rules—collectively bargained plans and plans of controlled groups.—Plans maintained pursuant to a collective bargaining agreement between employee representatives and one or more employers often provide for a predetermined level of contributions over a period longer than 12 months. Your committee believes that for the funding requirements to be workable in these cases, employers generally must be allowed to base their contributions on the bargained and agreed upon basis. Consequently, for purposes of maintaining the funding standard account, a plan year of a plan maintained pursuant to a collective bargaining agreement generally is to be considered as extending for the term of the collective bargaining agreement. This provision is intended to adapt the minimum funding standard to those plans where contributions are fixed by contract in accordance with a fixed standard, such as a specific dollar amount per hour of covered employment or a specific amount per ton of coal mined.

Under such a plan if the actuarial assumptions were reasonable and the actuarial calculations were correct as of the beginning of the term of the agreement, and the agreed contribution were made, there would be no deficiency in the funding standard account for the term of the collective bargaining agreement. Any experience loss could be made up by adjustment of the contribution rate or the level of benefits for the term of the required periods of amortization or the computation of the excise tax; also, with respect to collectively bargained plans it is intended that experience gains and losses generally are to be determined at the end of each contract period, or at the end of every 3 calendar years if more appropriate for the particular plan.

The bill also provides that, to meet the needs of other collectively bargained plans, the Secretary may issue regulations that provide other periods that may be treated as plan years. For example, it is understood that some multiemployer collectively bargained plans are based on a number of contracts, each expiring at different times. It is expected that in this case the regulations would provide that the plan could use a 12-month period (or perhaps longer period if needed) for the plan year. In this case, when experience losses are determined, the plan trustees could arrange for an increase in contributions for the next year, or could arrange for a decrease in future benefits to allow negotiations to occur later to increase contributions. Additionally, as discussed above, limited retroactive plan amendments would be allowed without the approval of the Secretary for up to 2 years after the end of the plan year, so benefits could be reduced to a limited extent if needed to avoid a funding deficiency.

The bill also provides that in the case of collectively bargained plans, the minimum funding standard is to be determined as if all participants in the plan were employed by a single employer. The bill provides the same treatment for deduction purposes. This merely restates existing law.

Exclusions from coverage—insured plans.—If a pension plan is funded exclusively with certain individual insurance contracts, the bill provides that the plan is not subject to the minimum funding requirements. Your committee believes that if qualified insurance contracts are used to fund a plan and payments are timely made, the plan will be properly funded.

The contracts that are to qualify for this treatment are level annual premium individual insurance contracts where the premium is paid from the first date of an individual's participation in the plan (and from the time an increase in benefits becomes effective) and is not paid beyond the individual's retirement age. Also, the benefits under the plan must be the same as the benefits provided by the individual contracts at normal retirement age. In addition, the benefits must be guaranteed by the insurance company to the extent that premiums are paid. For the contracts to qualify, the insurance company must be licensed to do business in the State where the plan is located. Furthermore, premiums for all plan years must have been timely paid or the policy reinstated. In addition, rights under the contracts must not have been subject to a security interest during the plan year, and no loans must have been made on the policy during the plan year.

If any of these requirements are not satisfied, then the normal rules with respect to the funding standard must be followed. If a plan is initially funded with qualified insurance contracts, but, *e.g.*, a contract payment is not made, then the plan will become subject to the minimum funding rules and an excise tax may be owed (as described below) if the plan funding falls below the minimum standard. (Generally, if the payments had been timely made until this time, the funding standard account for the year of nonpayment would start with a zero balance, the accrued plan liabilities and properly amortized amounts would be charged to the account for the year in question, and any excise tax owed would be based on the net charges to the funding standard account for that year.)

Exclusions from coverage—profit-sharing plans, etc.—Under present law profit-sharing and stock bonus plans to not require a definite predetermined formula for determining the portion of profits to be shared annually with the employees. Since the contributions to these plans may be varied substantially year-by-year under the plan, your committee believes that it is inappropriate for profit-sharing and stock bonus plans to be governed by the minimum funding standard.

On the other hand, employer contributions under money purchase pension plans must be definitely determinable and fixed without being geared to profits. It is appropriate for these plans to be governed by the minimum funding standard since the application of this standard (as under present law) will require the employer to make definitely determined contributions to the plan.

Your committee intends that plans generally are to be considered money purchase pension plans which meet the "definitely determinable" standard where the employer's contributions are fixed by the plan, even if the employer's obligation to contribute for any individual employee may vary based on the amount contributed to the plan in any year by the employee. For example, it is expected that a matching plan which provides that an employer will annually contribute up to 6 percent of an employee's salary, but that this contribution will be no more than the employee's own (nondeductible) contribution, will meet the "definitely determinable" criteria. In this case, the employer's contributions are set by the plan, will not vary with profits, and cannot be varied by the employer's action (other than by a plan amendment).

Exclusions from coverage—government plans and church plans.—It has been argued that government plans should be exempt from the funding standards since the taxing power can be viewed as a practical substitute for these standards. On the other hand, your committee is concerned with reports that in the case of a number of governmental units, such generous pension promises have been made and so little funds have been set aside currently, that the practical likelihood of imposing sufficient taxes to pay those benefits may be open to question.

In view of the information received with respect to possible underfunding problems of the plans, the bill provides that your committee and the Committee on Ways and Means are to study whether plans maintained by Federal, State, or local governments are adequately funded (taking into account the new minimum funding standards of the bill). Your committee and the Committee on Ways and Means is to submit to the House of Representatives the results of this study together with recommendations on funding standards for government plans by December 31, 1976.

Under the bill, government plans are plans established and maintained for their employees by the United States Government, or by the government of any State or political subdivision of a State, or by any agency or instrumentality of such governments. Also, except for the study described above, a plan to which the Railroad Retirement Act of 1935 or 1937 applies is to be treated as a government plan.

The bill also generally exempts church plans from the new funding requirements if these plans meet the funding requirements of present law. However, a church plan may elect to have all the provisions regarding participation, vesting, funding, and form of benefit apply. If such an election is made, then the minimum funding provisions will apply to the plan. (Under the bill, once it is made, the election is irrevocable.)

A church plan is defined under the bill as a plan established and maintained by a church (or convention or association of churches) that is tax-exempt under section 501 of the Code. However, a church plan does not include a plan established and maintained primarily for the benefit of persons employed in connection with an unrelated trade or business. Nor does a church plan include a multiemployer plan if one or more employers are not tax-exempt under section 501 of the Code as a church (or convention or association of churches). With

respect to plans in existence on January 1, 1974, if the plan applied on that date to employees of any tax-exempt agency of a church (or convention or association of churches) which established and maintained the plan, then the employees of the agency are to be treated as employees of the church (or convention or association of churches).

Actuarial considerations—actuarial assumptions, methods, valuation of assets.—Since actuarial calculations determine plan costs, the bill includes several basic rules regarding these calculations. Under the bill, plan liabilities must be determined on the basis of actuarial assumptions that, in the aggregate, are reasonable. Your committee recognizes that frequently there is a range of actuarial assumptions which may be appropriate for determining the costs of a defined benefit pension plan, and the choice of the appropriate assumptions is very much a matter of judgment. In this circumstance, an employer may attempt to substitute his judgment for that of his actuary, which may lead to situations where plan costs are not being independently determined by an actuary. Your committee believes that it is inappropriate for an employer to substitute his judgment in these matters for that of a qualified actuary, and it is contemplated that if such a circumstance were to arise an actuary would have to refuse giving his favorable opinion with regard to the plan or risk the sanctions imposed in fiduciaries who breach their duty.

Your committee recognizes that there are a substantial number of accepted methods of valuing assets of pension plans and many of these methods are designed to take into account market value and also to level out short-run market swings. Your committee believes that such valuation methods are appropriate since sharp, short-run variations in asset values could significantly affect the required funding if fair market value were the only accepted method of valuing assets for funding purposes. This would be inappropriate since pension plans are funded to meet the needs of the long-run, frequently over an employee's whole working life. On the other hand, your committee also recognizes that pension plans must value assets in a way that takes into account market value. Otherwise, there may be no relation between a plan's funding program and the assets actually available to pay benefits.

Under the bill, generally plan assets are to be valued on the basis of any reasonable acturial method of valuation that takes into account fair market value, pursuant to regulations to be issued by the Secretary. An acceptable alternative method, particularly as to bonds and other fixed-income investments, will be to value assets at their present or commuted value, in accordance with which the expected income stream is discounted by the valuation rate of interest and expressed as a capitalized sum. (Your committee anticipates that plan assets also will be valued for purposes of minimum funding requirements that are to be administered by the Department of Treasury. In order to provide for a uniform valuation of assets, regulations with respect to valuation which apply to plan years beginning after December 31, 1975, are to be effective only if approved by the Secretary of Treasury. Similarly, your committee anticipates that regulations applying to such plan years issued by the Department of Treasury are to be effective only if approved by the Secretary of the Labor.)

Your committee anticipates that fair market value generally would be an acceptable valuation method. On the other hand, it is contemplated that using cost or book value without taking account of changes in fair market value would not be an acceptable valuation method.[8] However, it is intended that acceptable valuation methods may include (but not be limited to) the use of a moving average (over, *e.g.*, five years), or increasing asset values each year by a stated percentage of the previous year's asset value under the assumption that an even long range appreciation will occur (in some cases, this increase may be reduced by realized appreciation or other income received from the asset.) Another alternative method may be to capitalize the current amount of income from each asset as a perpetuity, using the plan valuation rate of interest. For a valuation method to be reasonable, it is expected that the asset values obtained under the method of valuation used are to bear a reasonable relationship to fair market value, and that if fair market value and the value under the method used differ significantly over a period of several years that the value under the plan would be adjusted accordingly. However, where an unacceptable method is being used by an existing plan, it is contemplated that the Secretary will allow a transition

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[8] However, in a case where fair market value tended to fluctuate around cost, a reasonable actuarial method may determine that cost is the appropriate value.

so that the plan will have time to write up its asset values. Furthermore, it is expected that the method chosen must be used consistently by the plan.

It is also expected that the regulations will provide reasonable methods for valuing life insurance or annuity contracts, which will recognize the special nature of such contracts for valuation of pension plans.

Your committee also recognizes that often a pension plan will require bonds or other debt instruments as a long-term investment to be held until maturity. In that event, it would seem inappropriate to require the plan to change its valuation of the bond in accordance with market fluctuations. Therefore, the bill provides that a plan may elect to value its bonds or evidence of indebtedness on an amortized basis. At the election of the plan, the amortization may run from initial cost at purchase to par value at earliest call date or to par value at maturity. This election is to be made at the time and in the manner prescribed by regulations. The election is to be revocable only with the consent of the Secretary and is to apply to all bonds and evidences of indebtedness owned by the plan. Although the bill explicitly recognizes this as one reasonable method of valuation that a plan may use to value bonds or evidences of indebtedness, other valuation methods may be used for these assets. (Also, it may be reasonable to use the method explicitly recognized for bonds or indebtedness for valuing other assets.)

Plan 4—Plan Termination Insurance

Section 401

This section establishes a Pension Benefit Insurance Corporation administered by the Secretary of Labor, which requires plans to insure unfunded vested insured liabilities incurred prior to enactment of the Act, as well as after enactment of the Act. The Pension Benefit Insurance Corporation is hereinafter referred to as the Corporation.

Section 402. Purposes and powers of the Corporation

In general the purposes of the Corporation are to (1) encourage the continuation and maintenance of voluntary private pension plans for the benefit of their participants, (2) provide for the timely and uninterrupted payment of pension benefits to the participants and beneficiaries under all insured plans, and (3) minimize over the long run the premiums charged by the Corporation.

Under the general powers, the Corporation may enter into contracts. To the extent the Corporation chooses to enter into insurance contracts, the Corporation may purchase single premium annuities only from qualified carriers, only on a competitive bidding basis, and only to the extent that such action is consistent with the objective of minimizing over the long run the premiums charged by the Corporation.

Section 403. Conditions of insurance

The Corporation shall insure participants and beneficiaries of any plan covered under this part against the loss of benefits (insured under section 409) which arise from the complete or partial termination of such plans. A partial termination shall not be deemed to have occurred if all nonforfeitable benefits of participants and beneficiaries to which the partial termination applies continue as obligations of the plan or are otherwise satisfied.

Section 404. Plan termination insurance funds

Initially two funds are established—the Single Employer Primary Trust Fund relating only to single employer plans, and the Multiemployer Trust Fund relating only to multiemployer plans. After June 1, 1977 the Corporation may establish a Single Employer Optional Trust Fund for single employer plans choosing such option in order to be treated more favorably in regard to the employer liability imposed under section 414. Other funds may be established by the Corporation relating to insurance coverage for benefits other than the normal retirement benefits insured under the Single Employer Priority and Optional Trust Funds and the Multiemployer Trust Fund.

The integrity of the Single Employer Primary and Optional Trust Fund and the Multiemployer Trust Fund is to be maintained at all times.

The Corporation shall insure covered benefits of single employer plans and shall pay such benefits from the Single Employer Primary Trust Fund, except as

provided in section 405(c)(8) and section 409(c). The Corporation shall insure covered benefits, as determined in section 409, for participants and beneficiaries of multiemployer plans and shall pay such benefits from the Multiemployer Trust Fund, except as provided in section 409(c).

Section 405. Premium schedules

In general.—Separate premium schedules are to be applied to single employer plans and multiemployer plans.

Basis for Setting Premiums.—The initial premiums charged single employer plans for insurance of normal retirement benefits is made up of two parts—a rate not in excess of .1% times the excess of the present value of insured benefits over the value of the plan's assets and a rate (to be set by the Corporation at a level which will produce revenue from the second part approximately equal to the first part) times the present value of insured benefits. The initial premiums charged multiemployer plans is made up of two parts in the same manner as for single employer plans except that the rate for the first part is not to exceed .025%.

The premiums for single employer plans are to be based only on the actual and projected experience of single employer plans, and the premiums for multiemployer plans are to be based only on the actual and projected experience of multiemployer plans.

Any increase in the premium rates charged plans insured under the Single Employer Primary Trust Fund or the Multiemployer Trust Fund is to be approved by Congress by a concurrent resolution originating in the House.

The Corporation may establish the Single Employer Optional Trust Fund after June 1, 1977 in which case the premiums charged single employer electing coverage under such Optional Trust Fund shall be based on rates set by the Corporation which reflect the actual and expected experience of the single employer plans electing such optional coverage (for plan years beginning after June 1, 1977).

The Corporation is to adopt rules relating to the valuation of a plan's assets and liabilities for premium purpose. The Corporation shall adopt such rules only after considering recommendations made by actuaries, actuarial organizations, and other interested parties. Such rules shall be adopted by the Corporation giving due consideration to those methods which would best minimize the cost of calculating such premiums to the plans.

Section 406. Revised premium schedule procedure

Section 406 shall apply only in the case where the Corporation determines that increased rates are necessary under section 405(c)(1). The revised schedule shall apply only to plan years beginning more than thirty days after the date on which the Congress approves such revised schedule by a concurrent resolution originating in the House of Representatives.

Section 407. Cooperation and assistance of Government agencies

Section 408. Reports

The annual report required under sections 104 and 105 of this Act is to include such additional information as the Secretary deems necessary to carry out this part (including any reportable events under section 410).

Section 409. Coverage

Mandatory Coverage.—All qualified defined benefit pension plans subject to the minimum funding standards under the Act which have more than 25 participants over a five year period (10 of whom must be participants with nonforfeitable benefits) are covered and required to pay premiums under this part. In addition a plan must have assets equal to at least 10% of the present value of insured benefits (calculated without regard to section 409(f)) before coverage is made mandatory.

Voluntary Coverage.—The Corporation may insure qualified defined benefit plans not insured under (a) if they meet the other requirements under the Act and such other underwriting standards as the Corporation may deem necessary.

Benefits Covered.—The benefits insured for plans paying premiums with respect to the Single Employer Primary (or Optional) Trust Fund or the Multiemployer

Trust Fund are (1) the normal retirement benefits under such plans to the extent they are made nonforfeitable according to the minimum vesting schedule chosen by the plan under section 203, and (2) benefits other than normal retirement benefits which are nonforfeitable (other than in the event of termination) and which were payable prior to plan termination.

Supplemental Insured Benefits.—As a result of a study, the Corporation is to prescribe the terms and conditions under which benefits other than those described in (b) are to be covered.

Limitations on Insurance.—Benefits insured under the Single Employer and Multiemployer Trust Funds are limited to $20 per month per year of service payable in the form of a life annuity at age 65. The $20 limit is to be increased annually according to the increase in a Social Security "wage increase index".

The term "wage increase index" means an amount (not less than one) equal to average taxable wages for the first calendar quarter of the calendar year preceding the calendar year in which the determination is made, divided by average taxable wages for the first calendar quarter of 1975.

The term "average taxable wages" means the aggregate amount of wages (as defined in section 3121(a) of the Internal Revenue Code of 1954) paid all employees (as defined in section 3121(d) of such Code) in a calendar quarter, divided by the number of employees who received wages in such quarter.

The term "year of service" shall be defined in accordance with section 205(c)(3) of this Act.

Insurance benefits are not payable with respect to rights created by a plan amendment adopted or which takes effect less than 5 years prior to plan termination.

Insurance benefits are not payable with respect to certain substantial owners.

The maximum insured benefit is graded in for plans covered for less than 5 years.

Insurance benefits are not payable with respect to benefits accrued after a plan becomes disqualified by the Secretary of Treasury or the Secretary of Labor.

Section 410. Reportable events

The events to be reported include disqualification of a plan, a decrease in benefits as a result of a plan amendment, failure of a plan to meet the minimum funding requirements or to pay benefits, and certain other events. In regard to certain distributions to substantial owners required under subsection 410(b)(7), the Secretary may at his discretion choose to increase the value of the distribution stated therein or by regulation to prescribe under what conditions, where the potential for abuse is minimal, such events need not be reported.

Section 411. Termination of plan

After a hearing on the record with notice to all interested parties, the Secretary of Labor may order a partial or complete termination of a plan. Such termination can be ordered only if the corporation is likely to have to pay insured benefits and the probable long-run loss of the corporation can be expected to increase unreasonably. Upon the showing of reasonable cause by a plan administrator, any participant or beneficiary, an employer, or other plan sponsor, the Secretary shall hold a hearing on the record with notice and opportunity to be heard by all interested parties.

Section 412. Management functions

The Secretary is given broad authority to manage the assets of the fund and may retain outside financial advisors or consultants to manage such funds. The Secretary shall be mindful of and adopt such practices which are consistent with the objective of minimizing over the long run the premiums charged under this part.

Section 413. Functions of the Secretary

The Secretary of Labor shall transmit to the President and the Congress the annual financial statements and actuarial report of the corporation.

Section 414. Employer liability

The corporation shall have the status of a general creditor with respect to the liability imposed upon employers under this section. The liability imposed upon employers shall not be considered an obligation to the Federal government.

With respect to the voluntary curtailment provision under this section, a pension plan may be amended to suspend the further accumulation of benefits based on service after the effective date of such amendment (whether or not such benefits would have been forfeitable or nonforfeitable). However, years of service earned by a participant after the effective date of such an amendment shall be considered in determining the extent to which a participant has obtained nonforfeitable rights (under Section 203) to benefits under the plan based on service prior to the effective date of such amendment.

In the case of a plan to which this section applies under which nonforfeitable benefits of plan participants on the date of plan termination were accrued by reason of service with two or more employers, such employers shall be liable to the Corporation in an amount which in the aggregate equals the amount for which a single employer would be liable under subsection (b). A portion of such amount shall be apportioned to each employer (in accordance with rules of the Corporation) in an equitable manner which shall take into account accruals of benefits by reason of service with such employer and contributions by such employer, but no employer shall be liable under this subsection for an amount in excess of 50 percent of his net worth.

Section 415. Allocation of assets

For purposes of determining the employer liability under section 414 and the payments and distributions to be made under section 411, if any, the Secretary, the plan administrator, the Corporation, or the receiver, as the case may be, shall make such calculation or distribute such assets in accordance with section 112 (subject to any variance under section 501; the Secretary may at his discretion make the following exceptions) except that (1) such assets shall be first applied as provided in section 112(b)(1), (2) then such assets shall be applied pro rata (A) to benefits described in 112(b)(2) payable to participants or beneficiaries who have been receiving benefits under the plan for at least 3 years prior to plan termination; and (B) to insured benefits described in section 112(b)(2) payable to participants other than participants described in (A); (3) then such assets shall be applied to other insured benefits; and (4) then such assets shall be applied to payment of benefits (to the extent not paid under paragraphs (1), (2), and (3)) as provided in section 112.

Section 416. Effective date

Premiums and benefits payable under this part as a result of plan terminations shall apply to plan years beginning after June 1, 1974.

SUPPLEMENTAL VIEWS OF HON. JOHN N. ERLENBORN, HON. ALBERT H. QUIE, HON. EDWIN D. ESHLEMAN, AND HON. ROBERT J. HUBER

When H.R. 2, the proposed Employee Benefit Security Act of 1973, was originally reported by our Committee, supplemental views were included in the Committee Report expressing endorsement of that bill with one exception. That was the employer liability feature of the plan termination insurance provision of that bill.

While still concerned about the probable detrimental effects of employer liability, we are faced with a dilemma. This contingent obligation is replete with risks from both the workers' and the employers' point of view. Without some controls, however, any employer could terminate his plan without a valid reason and walk away, leaving the insurance Corporation to pay the benefits due.

The new version of H.R. 2 would allow any single-employer plan to take this route (and then to start a new plan for the same employees the next day) if it chooses coverage under the Single-employer Optional Trust Fund by paying a higher premium.

If termination insurance is to be enacted, certain safe-guards are essential.

Payment of a higher premium should not mean absolute relief from liability for an employer if he will be continuing in business and has no valid reason for terminating an under funded plan. Unless an economic crisis is at hand, the terminating employer should share in bearing the cost of the benefits to be paid. If employers are not subject to liability on a conditional basis such as this, the premiums under the optional coverage would immediately go so high as to render the optional coverage impractical. In fact, since the Secretary of Labor is given discretion whether to set up an optional trust fund, it is highly

doubtful that he would extend such coverage at all. We should not hold out hope for an insurance plan which on its face is unworkable. Either accept amendments to make it workable or drop it.

Additionally, we question whether the interests of participants in plans which are terminated can be responsibly served by a Corporation within the Department of Labor whose Board of Directors is composed solely of the Secretary of Labor and two of his employees. This concentration of power in one political appointee cannot by any measure be viewed as a reasonable approach.

A Board so composed would put the Secretary of Labor by himself in the position of making investment decisions involving billions of dollars in the private sector.

If the United States Steel Corporation were pondering a price increase, the insurance Corporation could decide to sell its U.S. Steel Stock to influence the decision. What would be the Secretary's buy-sell-hold position on oil company common stock today?

As an alternative, the interests of *participants* should be the first concern of a Board of Directors composed not only of representatives from the department of labor but representatives from labor, from management, and from the public as well.

Under the new H.R. 2, if the Secretary did not invest in the private sector, he would be forced into the following scenario.

When a plan terminates (and the largest number of terminations occur in economic downturns and recessions), the assets of the plan would be liquidated. Usually, they would be liquidated at depressed values, due to the timing of the forced liquidation. To make up for the underfunding of the terminated plans, premiums would have to be increased for all other plans (when they can least afford added expenses). The proceeds from the liquidation would be used to purchase annuities from insurance companies, and this would generally be at a time when annuity rates are up. There is no economic justification for this costly approach.

Liquidation of assets at any time would not necessarily be beneficial to the employees covered by the plan. The Corporation should have alternatives to hasty liquidation.

One such alternative would be to allow the appointment of a receiver (trustee) to administer the plan. Another would be to allow the Corporation to assume the assets (and liabilities) of the plan and then to manage such assets as part of the total assets of the Corporation.

The Corporation also should be permitted to retain outside financial advisors and consultants concerning the investment of some or all of its funds. These steps would help to insure the most productive management of assets and to minimize over the long run the premiums charged by the Corporation.

These changes are imperative if investment decisions are to remain in the private sector, if termination insurance is to work, and if it is to work economically.

JOHN N. ERLENBORN.
ALBERT H. QUIE.
EDWIN D. ESHLEMAN.
ROBERT J. HUBER.

[From the Congressional Record—House, Feb. 26, 1974]

H.R. 2, Employee Benefit Security Act

Mr. Sisk. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 896 and ask for its immediate consideration.

The Clerk read the resolution as follows:

H. Res. 896

Resolved, That upon the adoption of this resolution it shall be in order to move, clause 7 of rule XIII to the contrary notwithstanding, that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 2) to revise the Welfare and Pension Plans Disclosure Act. After general debate, which shall be confined to the bill and shall continue not to exceed four hours, two hours to be equally divided and controlled by the chairman and ranking minority member of the Committee on Education and Labor, and two hours to be equally divided and controlled by the chairman and ranking minority member of the Committee on Ways and Means, the bill shall be read for amendment under the five-minute rule. It shall be in order to consider without the intervention of any point of order, in lieu of the committee amendment now printed in the bill H.R. 2, as one amendment in the nature of a substitute for the bill H.R. 2 the text of the bill H.R. 12906 as title I of said substitute and the text of the bill H.R. 12855 as title II of said substitute. Said substitute shall be read as an original bill for the purpose of amendment under the five-minute rule by parts instead of by sections, and title II of said substitute shall be considered as having been read for amendment. No amendments shall be in order to title II of said substitute except amendments offered by direction of the Committee on Ways and Means, which amendments shall be in order, any rule of the House to the contrary notwithstanding and which shall not be subject to amendment, and germane amendments to subsections 2001(a)(1)(A), 2001(a)(2), 2001(b) and 2001(a)(3) of title II relating to the maximum dollar amount or maximum percentage deductible for contributions on behalf of self-employed individuals and share-holder-employees. At the conclusion of the consideration of H.R. 2 for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the amendment in the nature of a substitute made in order by this resolution. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

The Speaker. The gentleman from California (Mr. Sisk) is recognized for 1 hour.

Mr. Sisk. Mr. Speaker, I yield 30 minutes to the gentleman from Illinois (Mr. Anderson), pending which I yield myself such time as I may consume.

Mr. Speaker, House Resolution 896 provides for a modified open rule with 4 hours of general debate, 2 hours to be equally divided and controlled by the chairman and ranking minority member of the Committee on Education and Labor, and 2 hours to be equally divided and controlled by the chairman and ranking minority member of the Committee on Ways and Means, on H.R. 2, a bill to revise the Welfare and Pension Plans Disclosure Act.

House Resolution 896 provides that it shall be in order to consider without the intervention of any point of order, in lieu of the committee amendment now printed in the bill H.R. 2, as one amendment in the nature of a substitute for the bill H.R. 2, the text of the bill H.R. 12906 as title I of the substitute and the text of the bill H.R. 12855 as title II of the substitute.

House Resolution 896 provides the substitute shall be read as an original bill for the purpose of amendment under the 5-minute rule by parts instead of by sections, and title II of the substitute shall be considered as having been read for amendment.

House Resolution 896 also provides that no amendments shall be in order to title II of the substitute except: First, amendments offered by direction of the Committee on Ways and Means, which shall be in order, any rule of the Rules of the House of Representatives to the contrary notwithstanding and which shall not be subject to amendment: and second, germane amendments to subsections 2001(a)(1)(A), 2001(a)(2), 2001(b) and 2001(e)(3) of title II relating to the maximum dollar amount or maximum percentage deductible for contributions on behalf of self-employed individuals and shareholder-employees, commonly known as the "Keogh plan."

Both titles I and II of the substitute include similar provisions dealing with participation and coverage, vesting and funding of individual private pension rights. The substitute requires companies having pension plans to extend coverage to all employees who have reached the age of 25, with at least 1 year of service to the company. It also requires the adoption of one of three minimum vesting standards: First, graduated vesting beginning with at least 25 percent after 5 years, increasing to 100 percent after 15 years; second, 100 percent after 10 years; or third, 50 percent when years of service and age of employee total 45 and 10 percent per year over the next 5 years.

In addition to the above provisions, title II increases the tax deduction allowed for retirement plans for self-employed persons from the present 10 percent of earnings up to $2,500 to 15 percent of earnings up to $7,500. Title II also permits individuals not covered by qualified or Government pension plans to take a deduction of up to 20 percent of their earned income, not to exceed $1,500.

Mr. Speaker, I urge the adoption of House Resolution 896 in order that we may discuss and debate H.R. 2.

Mr. Anderson of Illinois. Mr. Speaker, I yield myself such time as I may consume.

(Mr. Anderson of Illinois asked and was given permission to revise and extend his remarks.)

Mr. Anderson of Illinois. Mr. Speaker, this rule, House Resolution 896, that will, if adopted, make in order consideration of the Employee Benefit Security Act, or the bill that is more commonly referred to, I think, in popular parlance, as pension reform, is a most unusual rule, and therefore I think requires some comment from both sides of the aisle.

Mr. Speaker, we are confronted with a very unusual situation, and one, in all candor, with which I am not completely happy.

What happened is that the Committee on Rules met in the 1st session of this 93d Congress on the 24th of October of 1973 to consider legislation that had been referred out of the House Committee on Education and Labor on the subject of pension reform. At that time we were confronted with the fact that the Committee on Ways and Means, which also claims jurisdiction in this area, had not completed work on a bill of its own. In an effort—and understandably so, I think—to accommodate that committee and to make it possible for them to present their ideas as well before the Committee on Rules, we deferred any final consideration of the matter.

We next met on the 30th of October, 1973, for the same purpose, and at that time again we found that there had been an inability on the part of these two very important committees of the House, the Committee on Education and Labor and the Committee on Ways and Means, to reconcile their conflicting approaches to this particular matter.

So again our hearings were continued over until the 2d session of this 93d Congress when we met again on the 29th of January of 1974. Again the Committee of Rules found itself confronted with a situation where, even though, as I recall it, both the acting chairman of the Committee on Ways and Means and the chairman of the subcommittee, the gentleman from Pennsylvania (Mr. Dent) appeared before our committee, there was no clear agreement or consensus as to the manner in which this bill should be handled in all of its phases here on the floor of the House. It was therefore not until the 19th of February of 1974 that these gentlemen again came before the Committee on Rules and presented what we have essentially before us today in House Resolution 896.

What it does, in essence, is to make in order the consideration of not just one bill, but actually two pension reform bills, one, as I explained before, worked out in the Committee on Education and Labor, and the other one eminating from the Committee on Ways and Means.

In all frankness, Mr. Speaker, I would have much preferred the opportunity this afternoon and in the time that we spend on this very important subject matter, a simple rule which would have provided for the consideration of a single pension reform bill, under the circumstances that would have permitted proper amendments from anyone offering them here on the floor of the House.

Mr. Speaker, House Resolution 896 is an unusual rule because this is an unusual situation, and, I might add, a situation with which I am not entirely happy. For what this rule really does is to make in order the consideration of not one but two pension reform bills—one from the Education and Labor Committee and the other from the Ways and Means Committee. I would have much preferred bringing out a simple rule providing for the consideration of just one pension bill, and our Rules Committee made every effort to bring these two committees together for the purpose of drafting a consolidated bill. But even the powerful Rules Committee was not able to pull off this miracle of compromise and reconciliation, and so we are faced today with the difficult task of considering two separate, yet overlapping, pension bills simultaneously.

I think this is especially unfortunate because this means that we are superimposing on the already complex issue of pension reform a most complex parliamentary situation, and as debate on the rule and the bill proceeds, the truth of this understatement will become self-evident. It is most regrettable that so much of our energy and attention will be focused today on the procedural aspects of the proceedings to the detriment of the substantive aspects of these pension reform bills.

The rule now before us provides for 4 hours of general debate on H.R. 2, to be equally divided between the Ways and Means and Education and Labor Committees, and it also makes in order as a substitute for H.R. 2, two bills: H.R. 12906, a revised version of H.R. 2 as reported from Education and Labor, which shall be considered title I of the substitute; and H.R. 12885, as reported from Ways and Means, which shall be considered as title II of the substitute. While title I, the Education and Labor bill, will be open for amendment under the 5-minute rule, title II, the Ways and Means bill, will be considered under what is essentially a closed rule, with the exception that the H.R. 10 or "Keogh" portion of the bill may be amended, and committee amendments will also be in order.

This perhaps wouldn't be too difficult and confusing if title I and II were supplementary yet complementary to each other. But the fact is that both titles contain provisions on participation, vesting and funding, and while these provisions are essentially identical now, they may not still be so following the amendment process. In addition, while title I puts the overall administration of these matters in the hands of the Department of Labor, title II puts them with the Department of the Treasury. In other words, if we adopt this substitute as it has been presented to us, we will have a dual administrative setup, as some have described it, a "hydraheaded monster." I think I am safe in observing that it is probably this difference which is primarily responsible for the fact that we are considering two bills rather than one bill today.

Recognizing the confusion and costs involved in such a dual system, it is my understanding that two attempts will be made to place this under either Labor or Treasury. I have been informed that my colleague from Illinois (Mr. Erlenborn) will ask that the previous question on this rule be defeated so that he may offer a revised rule which would permit a final vote, following the amendment process, on placing the administration under either Labor or Treasury.

I have also been informed that my colleague from Texas (Mr. Archer) will be attempting a similar feat by offering an amendment to title I to eliminate the role of the Labor Department in administering participation, vesting, and funding, with respect to qualified plans, thus placing this solely with the Department of Treasury. There is no difference over the jurisdiction the Department of Labor would have with respect to the reporting, disclosure, and fiduciary standards provisions contained in title I.

These are the basic procedural questions confronting this body today, though they obviously touch upon very important substantive questions. Other important amendments which will be offered at the appropriate time include a substitute "termination insurance" pro-

posal authored by Congressman Erlenborn, and an attempt to either reduce or eliminate the increased deduction for the self-employed. I will not go into these further at this time since I am sure they will be adequately covered during general debate. But I would urge my colleagues, in conclusion, to follow these proceedings very closely or it will be very easy to get lost in the parliamentary maze which stretches before us.

Mr. Speaker, I yield 5 minutes to the gentleman from Illinois (Mr. Erlenborn).

(Mr. Erlenborn asked and was given permission to revise and extend his remarks.)

Mr. ERLENBORN. Mr. Speaker, some 5 or 6 years ago the General Subcommittee on Labor of the Committee on Education and Labor began consideration and extensive hearings in the area of private pension reform. We have spent considerable of our time over the ensuing years on this.

At the outset I want to say I am pleased to come here in the well today in substantial agreement with the chairman of the subcommittee, the gentleman from Pennsylvania, John Dent. As we are all aware the gentleman from Pennsylvania (Mr. Dent) and I do not always agree, but this is one case where we are in very substantial agreement. There is only one element in the bill I would like to see amended and improved.

A few years ago the gentleman from Pennsylvania (Mr. Dent) saw the wisdom of acquiring staff that could be devoted entirely to the consideration of private pension reform, so we began a task force under the auspices of the General Subcommittee on Labor, acquired expert staff, and over the past 2 years with the task force have traveled extensively in gathering statements and evidence from those who are interested in the field of private pension reform, including employers and employees and labor organizations and people who operate private pension plans, and the members of the subcommittee have devoted substantial time to this effort.

Finally in the fall of last year we were able to reach, as I say, very substantial agreement. Almost all of the elements of the bill as it is reported—disclosure and fiduciary relationships and vesting and funding—with the one exception of termination insurance, we agreed upon.

The bill was reported from the subcommittee and the full committee with virtually no opposition. I am pleased that we were able to do this in a way that was very responsible and responsive to the needs of the workers of America for the protection that they so desperately need, to see that they do get the pensions that they have been promised, that the funds will be there, that they have vested rights and it cannot be taken away from them.

Last October we were ready to come to the floor of this House with pension legislation. Almost concurrently with the reporting from the Committee on Education and Labor of this private pension reform bill, interest was shown by the Committee on Ways and Means on the same subject. This is not surprising. The same scenario was true in the other body in the Congress, preceding this. The Committee on Labor and Public Welfare reported the bill and the Committee on Finance in the other body expressed interest, and in this Congress when they did pass a bill both committees exercised jurisdiction over the bill; so

it was not surprising that the Committee on Ways and Means of the House would have an interest in this bill.

It was announced by the acting chairman of the Committee on Ways and Means at that time that they would devote a week to marking up the bill and they began with the Senate-passed bill.

I think in the intervening time from last October until the present time, the Committee on Ways and Means has devoted an exceptional amount of time to studying the provisions of this legislation and making judgments as to what the provisions ought to be.

Now we have before us in title II of the bill under consideration that which will be offered by the Committee on Ways and Means as the result of their efforts. By and large they have agreed with the judgments made by the Committee on Education and Labor.

The one problem that we were faced with, was the question of who should have jurisdiction, which committee and, therefore, which Department of Government would have jurisdiction for administration.

The Committe on Rules suggested to the acting chairman of the Committee on Ways and Means and the chairman of our subcommittee, the gentleman from Pennsylvania (Mr. Dent) that they resolve their differences.

It was very easy for these gentlemen to resolve their differences as to reporting and fiduciary and tax provisions, the former going to the Committee on Education and Labor, the tax provisions to the Committee on Ways and Means.

In the area of participation, vesting and funding, the two chairmen were unable to agree as to which should have jurisdiction, so they went to the Committe on Rules and asked that both bills be considered in full.

The SPEAKER. The time of the gentleman has expired.

(At the request of Mr. Anderson of Illinois, and by unanimous consent Mr. Erlenborn was allowed to proceed for an additional 5 minutes.)

Mr. ERLENBORN. Mr. Speaker, they asked the Committee on Rules that both bills be considered in full, Education and Labor as title I and Ways and Means as title II. After perfecting title I and title II to the extent it can be perfected, then adopt both the Education and Labor reported bill and the Ways and Means bill as one bill.

The problem is that in title I we have one set of laws relating to participation, vesting, and funding to be administered by the Department of Labor, and in title II we have another set of laws in exactly the same area; participation, vesting, and funding to be administered by the Treasury Department.

I think the House would be made to look foolish if we passed legislation of this sort in the same bill, adopting two sets of laws in the same area, providing two different Departments of Government with concurrent jurisdiction for administration and forcing those who are administering private pension plans to go to two different governmental agencies on the same questions.

No doubt we all know how bureaucrats can look at laws and regulations and have differing interpretations; no doubt these plan administrators will get two different interpretations, one from the set of bureaucrats on the Department of Labor and another set of interpretations from the Treasury Department.

It would be virtually impossible to satisfy both at the same time since both have jurisdiction in the same area. For this reason, Mr. Speaker, though I am supporting the rule, I am asking that the previous question on the rule be voted down.

If that is done, I will offer an amendment to the rule that will provide that upon perfecting both title I and title II, a separate vote shall be taken on the question as to whether we shall have jurisdiction in the Labor Department or in the Treasury Department.

The language of the amendment is that upon perfecting title II, a separate vote should be taken on part 1 of title II. Part 1, as the Members will recall, is participation, vesting and funding in the Ways and Means provision.

The language goes on to say that if part 1 of title II is adopted, parts 2 and 3 of title I will be considered as stricken because they are the same area of participation, vesting, and funding. So that on this one vote the Members will have a clear choice as to Labor Department or Treasury Department, and the House will not be put into the position of having to pass a bill that has jurisdiction in both in the same bill.

Mr. Steiger of Wisconsin. Mr. Speaker, will the gentleman yield?

Mr. Erlenborn. Mr. Speaker, I yield to the gentleman from Wisconsin.

Mr. Steiger of Wisconsin. Mr. Speaker, I appreciate the gentleman yielding to me. I wish to commend him for the statement he has made, and to ask a question.

Mr. Speaker, is it clear that at some point during the consideration under this rule, if the previous question is not voted down, a vote can be obtained on striking section 1 of title II?

Mr. Erlenborn. No, I will answer the gentleman by saying that under this rule, if it is not amended, no separate vote could be taken on part 1 of title II, so we would be locked in to either rejecting all of title II, the entire ways and means provision, or accepting all of title II.

Mr. Steiger of Wisconsin. Mr. Speaker, I appreciate the gentleman's response to the question, and I am grateful for his clarification.

Mr. Speaker, I concur fully with the gentleman that it makes absolutely no sense to see this House try to take a bill to the other body in which we have conflicting, overlapping dominant jurisdiction on those issues.

Mr. Speaker, I support the gentleman's position. I hope we can have a separate vote on that issue, Labor versus Treasury.

Mr. Erlenborn. Mr. Speaker, I thank the gentleman from Wisconsin for his contribution.

Mr. Sisk. Mr. Speaker, I yield 6 minutes to the gentleman from Pennsylvania (Mr. Dent).

(Mr. Dent asked and was given permission to revise and extend his remarks.)

Mr. Dent. First, Mr. Speaker, let me say that this is a very difficult rule, and some sections are rather strange. However, it must be said in all honesty that the Committee on Rules was faced with making a Solomon's decision, and it had to be made prior to floor action, a question of jurisdiction that would have completely buried the contents and the intent of this legislation.

There is no such thing as a conflict in the provisions on vesting and funding between the Labor provisions and the Ways and Means provisions. They are identical in their concept, their provision and in criteria.

For instance, under the title coming from the Labor Committee, we have a 10-year vesting. The Ways and Means bill has a 10-year vesting. Under the Labor bill, we have a graduated 15-year vesting; 5 years, 25 percent; 10 years, 50 percent; 15 years, 100 percent of vesting. The identical provisions are in the bill coming from the Ways and Means Committee.

The third rule of vesting is a rule of 45, including age and service, which is identical to the provisions of the other bill.

The provisions of both bills require funding the normal cost, amortization of past service costs over 30 years (40 years, multiemployer plans) is identical to the language in the Ullman bill.

Now, the reason that we had to agree that it was proper for both bills to contain these provisions is that in our bill it is a question of setting minimum standards for contracting bodies to agree to come to some vesting period that is a minimum vesting period for the labor negotiations.

In the Ullman bill it is there for the purpose of establishing tax treatment for the plans that are approved as they are today by the IRS. However, we do not in any way spell out any provisions of vesting that are superior or better than the minimum standards that we set, nor are we asking that there be any such restrictions.

Now, the reason that the IRS has asked that it have funding and vesting provisions in its portion of the bill is because if a contract is made where there is a different type of vesting, they still have the responsibility, and they have to then determine whether that additional or different type of vesting and funding can be treated in the same manner as the minimum requirements that are contained in both bills.

Mr. Speaker, we cannot interfere with the provisions of the act that deal with tax treatment. We do not do it in this section, nor do we do it in the so-called section of the bill dealing with private or individual pensions for self-employed persons. And yet they have to set standards. Up until this point, participation in or qualification of a plan was based upon certain minimum standards issued by the IRS.

The labor section of the bill has always contanied the qualifying standards set by the IRS, but when we spelled out specific minimum requirements, then they had to either change their qualifications to some other base or accept our minimum standards.

So there is no conflict there. On top of all of it, the most important part is that these two agencies are involved in this area for different purposes but with the same criteria. These committees have provided identical statutory standards and have required the two agencies to issue joint regulations. In other words, there will be no conflict of regulations, and only in that particular instance could there be the kind of a situation that had been conjured up before the House by my worthy colleague, the minority Member.

Mr. Speaker, I wish to say to the Members that I consider the patience of the Committee on Rules with regard to this difficult problem to be an outstanding development in legislative enactment. I believe that the committee's decision was a decision worthy of Solomon, and

I want to compliment the gentleman from Illinois (Mr. Erlenborn) who is my ranking member. Throughout all of these years of discussion and debate we have disagreed about many of the features of the act, and we have come together on many of them, but there has never been a point where we have not worked together. Although there are still some areas in which we differ and although we may differ in context as to what we want to put into the legislation, at no point is there any argument as to the justice of his proposal or the justice of our opposition to his proposal.

Therefore, Mr. Speaker, I wish to say that this is the only way by which I know we can get this legislation before the House, legislation which is so essential to the welfare of hundreds of thousands of American workers.

Mr. Ullman. Mr. Speaker, will the gentleman yield?

Mr. Dent. I yield to the gentleman from Oregon.

Mr. Ullman. Mr. Speaker, I wish to commend the gentleman and to join with him in saying that this is a responsible rule. It is a responsible legislative procedure. It has been worked out in great detail with expert staff members, both on the Committee on Labor side and the Committee on Ways and Means side.

This proposed legislation recognizes the basic responsibility of the Internal Revenue Service and the Treasury Department in administering the qualified plans, which involve some $4 billion of tax revenue, and at the same time recognizing the responsibility of the Labor Department.

We have adopted a procedure under which uniform regulations can be accomplished. It is workable, responsible, and sound, and I commend the gentlemen in the well.

Mr. Dent. I thank the gentleman.

Mr. Anderson of Illinois. Mr. Speaker, I yield 4 minutes to the gentleman from Texas (Mr. Archer).

(Mr. Archer asked and was given permission to revise and extend his remarks.)

Mr. Archer. Mr. Speaker, I also would like to commend all members of both committees and the staffs of the Committee on Ways and Means and the Committee on Education and Labor who have worked many long hours in putting together this package of pension reform legislation.

I must also say I agree with my colleague from Illinois (Mr. Erlenborn) that there is a great danger in any bill that sets up dual administration between two Federal agencies no matter how carefully designed that dual administration is. Even if the regulations are the same, the interpretation of the regulations will often be different between those two organizations. As a result, you could very well have an employer taken to court by the Department of Labor for failing to comply with its interpretation while that same employer has been given a clean bill of health by the Department of the Treasury under its interpretation of the same rules.

I disagree, however, with my colleague from Illinois in his procedural method of attempting to cure this problem. It is not necessary to vote down the previous question in order to offer an amendment that would provide the only means of truly consolidating the admin-

istration of pension plans under this new law and the existing law. Even if the gentleman from Illinois is successful in his effort, we will be left with a continuing dichotomy in the administration of these bills, because even if all administration under this new law is put into the Department of Labor, the Treasury Department still has a responsibility under the existing law, which is left intact, to regulate vesting, funding and participation in the implementation of the nondiscriminatory feature that it must apply. So even if the gentleman is successful in voting down the previous question and is successful in his effort to do what he calls consolidate, he will still end up with a conflict where employers must go both to the Department of Labor and the Department of Treasury for the determination of how their plans are to be administered.

I think we have a vital obligation to workers and small businessmen in this country to see that their dollars are spent on benefits and not on administrative redtape. We have testimony from a number of experts in the pension field that with respect to small employers dual administration will double their administrative costs and in some instances run it up to over 50 percent of the total cost of their pension programs.

I say to you that we will look ridiculous if we do this. But it is not necessary to change the rule. The Committee on Rules has done, in my opinion, an excellent job in putting together a difficult package. If we vote for the previous question and accept the rule they have given us, I will offer an amendment to accomplish the only way to consolidate the administration of funding, vesting, and participation requirements under this bill, and that is to put it under the Department of the Treasury.

I hope you will vote for the previous question, and I hope you will vote for the amendment which I will offer as the only means of consolidating the administration, which I think is so vital in order to continue to attract more plans and prevent existing plans from being terminated as a result of higher administrative costs.

Mr. Ichord. Will the gentleman yield?

Mr. Archer. I am glad to yield to my friend from Missouri.

Mr. Ichord. What will your amendment leave under the Department of Labor and what will it leave under the Department of the Treasury?

Mr. Archer. The Department of Labor would be left with the responsibility to administer rules for disclosure fiduciary responsibility and termination insurance as well as all requirements for nonqualified plans.

Mr. Sisk. Mr. Speaker, I have no further requests for time.

Mr. Speaker, I move the previous question on the resolution.

The Speaker. The question is on ordering the previous question.

The question was taken, and the Speaker announced that the ayes appeared to have it.

Mr. Erlenborn. Mr. Speaker, I object to the vote on the ground that a quorum is not present, and make the point of order that a quorum is not present.

The Speaker. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 331, nays 53, not voting 47, as follows:

[Roll No. 42]

YEAS—331

Abzug
Adams
Addabbo
Anderson, Calif.
Anderson, Ill.
Andrews, N. Dak.
Annunzio
Archer
Ashley
Aspin
Bafalis
Barrett
Bell
Bennett
Bergland
Bevill
Biaggi
Biester
Bingham
Blatnik
Boggs
Boland
Bolling
Bowen
Brademas
Bray
Breaux
Breckinridge
Brinkley
Broomfield
Brotzman
Brown, Ohio
Broyhill, Va.
Buchanan
Burke, Calif.
Burke, Fla.
Burke, Mass.
Burleson, Tex.
Burlison, Mo.
Burton
Byron
Camp
Carey, N.Y.
Carter
Casey, Tex.
Cederberg
Chamberlain
Chappell
Chisholm
Clancy
Clark
Cleveland
Cochran
Cohen
Collins, Ill.
Conte
Corman
Cotter
Coughlin
Cronin
Culver
Daniel, Dan
Daniel, Robert W., Jr.
Daniels, Dominick V.
Danielson
Davis, Ga.
Davis, S.C.
de la Garza
Delaney
Dellums
Denholm
Dennis
Dent
Devine
Diggs
Dingell
Donohue
Dorn
Downing
Drinan
Dulski
Duncan
Eckhardt
Edwards, Ala.
Edwards, Calif.
Eilberg
Esch
Evans, Colo.
Fascell
Fish
Fisher
Flood
Flowers
Flynt
Foley
Ford
Forsythe
Fountain
Fraser
Frenzel
Fulton
Gaydos
Gettys
Giaimo
Gibbons
Gilman
Ginn
Goldwater
Gonzalez
Goodling
Grasso
Green, Oreg.
Green, Pa.
Griffiths
Grover
Gubser
Gude
Gunter
Guyer
Haley
Hamilton
Hammerschmidt
Hanley
Hanna
Hanrahan
Hansen, Idaho
Hansen, Wash.
Harsha
Hastings
Hawkins
Hébert
Hechler, W. Va.
Heinz
Helstoski
Henderson
Hicks
Hillis
Hinshaw
Holifield
Holt
Hotzman
Hosmer
Hudnut
Hungate
Hunt
Hutchinson
Ichord
Jarman
Johnson, Calif.
Johnson, Colo.
Johnson, Pa.
Jones, Ala.
Jones, N.C.
Jones, Okla.
Jordan
Karth
Kastenmeier
Kazen
Kemp
Ketchum
King
Koch
Kyros
Landrum
Latta
Leggett
Lehman
Lent
Litton
Long, La.
Long, Md.
Lott
Lujan
McClory
McCloskey
McCollister
McCormack
McDade
McFall
McKay
McKinney
McSpadden
Macdonald
Madden
Madigan
Mahon

Malliard
Mallary
Mann
Maraziti
Martin, Nebr.
Matsunaga
Mazzoli
Melcher
Metcalfe
Mezvinsky
Milford
Miller
Minish
Mink
Mitchell, Md.
Mitchell, N.Y.
Mizell
Moakley
Mollohan
Montgomery
Moorhead, Calif.
Moorhead, Pa.
Morgan
Mosher
Murphy, Ill.
Murtha
Myers
Natcher
Nedzi
Nelsen
Nichols
Nix
Obey
O'Hara
O'Neill
Owens
Parris
Passman
Patman
Patten
Pepper
Perkins
Pettis
Peyser
Pickle
Pike
Poage
Podell
Price, Ill.
Pritchard
Railsback
Randall
Rangel
Rarick
Rees
Regula
Reuss
Riegle
Rinaldo
Rodino
Roe
Rogers
Roncalio, Wyo.
Roncallo, N.Y.
Rooney, Pa.
Rose
Rosenthal
Roush
Rousselot
Roy
Roybal
Runnels
Ruppe
Ryan
St Germain
Sandman
Sarasin
Sarbanes
Schneebeli
Schroeder
Sebelius
Seiberling
Shipley
Shriver
Shuster
Sikes
Sisk
Skubitz
Slack
Smith, Iowa
Smith, N.Y.
Snyder
Spence
Staggers
Stanton, J. William
Stanton, James V.
Stark
Steed
Steele
Steelman
Stephens
Stokes
Stratton
Studds
Symms
Talcott
Taylor, Mo.
Taylor, N.C.
Teague
Thompson, N.J.
Thomson, Wis.
Thone
Thornton
Tiernan
Towell, Nev.
Udall
Ullman
Van Deerlin
Vanik
Vigorito
Waggonner
Waldie
Walsh
Wampler
Whalen
White
Whitehurst
Whitten
Widnall
Wiggins
Williams
Wilson, Bob
Wilson, Charles H., Calif.
Wilson, Charles, Tex.
Winn
Wylie
Wyman
Yates
Yatron
Young, Alaska
Young, Ga.
Young, Tex.
Zablocki
Zion
Zwach

NAYS—53

Abdnor
Alexander
Arends
Armstrong
Ashbrook
Baker
Bauman
Beard
Brown, Mich.
Broyhill, N.C.
Burgener
Butler
Collier
Collins, Tex.
Conable
Conlan
Davis, Wis.
Dellenback
Derwinski
Dickinson
du Pont
Erlenborn
Evins, Tenn.
Findley
Frey
Froehlich
Fuqua
Gross
Harrington
Hogan
Horton
Huber
Landgrebe
Martin, N.C.
Mathis, Ga.
Mayne
Michel
O'Brien
Quie
Rhodes
Robinson, Va.
Robison, N.Y.
Ruth
Satterfield
Scherle
Steiger, Ariz.
Steiger, Wis.
Treen
Wyatt
Wydler
Young, Fla.
Young, Ill.
Young, S.C.

NOT VOTING—47

Andrews, N.C.
Badillo
Blackburn
Brasco
Brooks
Brown, Calif.
Carney, Ohio
Clausen, Don H.
Clawson, Del.
Clay
Conyers
Crane
Eshleman
Frelinghuysen
Gray
Hays
Heckler, Mass.
Howard
Jones, Tenn.
Kluczynski
Kuykendall
McEwen
Mathias, Calif.
Meeds
Mills
Minshall, Ohio
Moss
Murphy, N.Y.
Powell, Ohio
Preyer
Price, Tex.
Quillen
Reid
Roberts
Rooney, N.Y.
Rostenkowski
Shoup
Stubblefield
Stuckey
Sullivan
Symington
Vander Jagt
Vander Veen
Veysey
Ware
Wolff
Wright

So the previous question was ordered.

The Clerk announced the following pairs:

Mr. Rostenkowski with Mr. Symington.
Mr. Rooney of New York with Mr. Powell of Ohio.
Mr. Howard with Mr. Brown of California.
Mr. Hays with Mr. Price of Texas.
Mr. Brasco with Mr. Mills.
Mr. Jones of Tennessee with Mr. Shoup.
Mr. Roberts with Mr. Quillen.
Mr. Reid with Mr. Blackburn.
Mrs. Sullivan with Mr. Frelinghuysen.
Mr. Wolff with Mrs. Heckler of Massachusetts.
Mr. Murphy of New York with Mr. Vander Veen.
Mr. Moss with Mr. Kuykendall.
Mr. Carney of Ohio with Mr. Del Clawson.
Mr. Badillo with Mr. Minshall of Ohio.
Mr. Andrews of North Carolina with Mr. Don H. Clausen.
Mr. Stubblefield with Mr. Mathias of California.
Mr. Stuckey with Mr. Crane.
Mr. Wright with Mr. McEwen.
Mr. Brooks with Mr. Eshleman.
Mr. Clay with Mr. Gray.
Mr. Kluczynski with Mr. Vander Jagt.
Mr. Conyers with Mr. Meeds.
Mr. Preyer with Mr. Ware.

The result of the vote was announced as above recorded.

The SPEAKER. The question is on the resolution.

RECORDED VOTE

Mr. ERLENBORN. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 373, noes 7, not voting 51, as follows:

[Roll No. 43]

AYES—373

Abdnor
Abzug
Adams
Addabbo
Alexander
Anderson, Calif.
Anderson, Ill.
Andrews, N. Dak.
Annunzio
Archer
Arends
Armstrong
Ashley
Aspin
Bafalis
Baker
Barrett
Bauman

Beard
Bell
Bennett
Bergland
Bevill
Biaggi
Biester
Bingham
Boggs
Boland
Bolling
Bowen
Brademas
Bray
Breaux
Breckinridge
Brinkley
Brooks
Broomfield
Brotzman
Brown, Mich.
Brown, Ohio
Broyhill, N.C.
Broyhill, Va.
Buchanan
Burgener
Burke, Calif.
Burke, Fla.
Burke, Mass.
Burleson, Tex.
Burlison, Mo.
Burton
Butler
Byron
Camp
Carey, N.Y.
Carter
Casey, Tex.
Cederberg
Chamberlain
Chappell
Chisholm
Clancy
Clark
Cleveland
Cochran
Cohen
Collier
Collins, Ill.
Conable
Conlan
Conte
Corman
Cotter
Coughlin
Cronin
Culver
Daniel, Dan
Daniel, Robert W., Jr.
Daniels, Dominick V.
Danielson
Davis, Ga.
Davis, S.C.
Davis, Wis.
de la Garza
Delaney
Dellenback
Dellums
Denholm
Dennis
Dent
Devine
Dickinson
Diggs
Donohue
Dorn
Downing
Dulski
Duncan
du Pont
Eckhardt
Edwards, Ala.
Edwards, Calif.
Eilberg
Erlenborn
Esch
Evans, Colo.
Evins, Tenn.
Fascell
Findley
Fish
Fisher
Flood
Flowers
Flynt
Foley
Forsythe
Fountain
Fraser
Frenzel
Frey
Fulton
Fuqua
Gaydos
Gettys
Giaimo
Gibbons
Ginn
Goldwater
Gonzalez
Goodling
Grasso
Gray
Green, Oreg.
Green, Pa.
Griffiths
Gross
Grover
Gunter
Guyer
Haley
Hamilton
Hammerschmidt
Hanley
Hanna
Hanrahan
Hansen, Idaho
Hansen, Wash.
Harsha
Hastings
Hawkins
Hays
Hébert
Hechler, W. Va.
Heinz
Helstoski
Henderson
Hicks
Hillis
Hinshaw
Hogan
Holifield
Holt
Holtzman
Horton
Hosmer
Huber
Hudnut
Hungate
Hunt
Hutchinson
Ichord
Jarman
Johnson, Calif.
Johnson, Colo.
Johnson, Pa.
Jones, Ala.
Jones, N.C.
Jones, Okla.
Jordan
Karth
Kastenmeier
Kazen
Kemp
Ketchum
King
Koch
Kyros
Landrum
Latta
Leggett
Lehman
Lent
Litton
Long, La.
Long, Md.
Lott
Lujan
McClory
McCloskey
McCollister
McCormack
McDade
McFall
McKay
McKinney
McSpadden
Macdonald
Madden
Madigan
Mahon
Mailliard
Mallary
Mann
Maraziti
Martin, Nebr.
Martin, N.C.
Mathias, Calif.

Mathis, Ga.
Matsunaga
Mayne
Mazzoli
Melcher
Metcalfe
Mezvinsky
Michel
Milford
Miller
Minish
Mink
Mitchell, Md.
Mitchell, N.Y.
Mizell
Moakley
Mollohan
Montgomery
Moorhead, Calif.
Moorhead, Pa.
Morgan
Mosher
Murphy, Ill.
Murtha
Myers
Natcher
Nedzi
Nichols
Nix
Obey
O'Brien
O'Neill
Owens
Parris
Passman
Patman
Pepper
Perkins
Pettis
Peyser
Pickle
Pike
Poage
Podell
Price, Ill.
Pritchard
Quie
Quillen
Railsback
Randall
Rangel
Rarick
Rees
Regula
Rhodes
Riegle
Rinaldo
Robinson, Va.
Robison, N.Y.
Rodino
Roe
Rogers
Roncalio, Wyo.
Roncallo, N.Y.
Rooney, Pa.
Rose
Rosenthal
Roush
Rousselot
Roy
Roybal
Runnels
Ruppe
Ruth
Ryan
St Germain
Sandman
Sarasin
Sarbanes
Satterfield
Scherle
Schneebeli
Schroeder
Sebelius
Seiberling
Shipley
Shriver
Shuster
Sikes
Sisk
Skubitz
Slack
Smith, Iowa
Smith, N.Y.
Snyder
Spence
Staggers
Stanton, J. William
Stanton, James V.
Stark
Steed
Steele
Steelman
Steiger, Ariz.
Steiger, Wis.
Stephens
Stokes
Stratton
Stuckey
Studds
Symms
Talcott
Taylor, Mo.
Taylor, N.C.
Thompson, N.J.
Thomson, Wis.
Thone
Thornton
Tiernan
Towell, Nev.
Treen
Udall
Ullman
Van Deerlin
Vanik
Vigorito
Waggonner
Waldie
Walsh
Wampler
Whalen
White
Whitehurst
Whitten
Widnall
Wiggins
Williams
Wilson, Bob
Wilson, Charles H., Calif.
Wilson, Charles, Tex.
Winn
Wolff
Wyatt
Wydler
Wylie
Wyman
Yates
Yatron
Young, Alaska
Young, Fla.
Young, Ga.
Young, Ill.
Young, S.C.
Young, Tex.
Zablocki
Zion
Zwach

NOES—7

Ashbrook
Collins, Tex.
Derwinski
Drinan
Harrington
Landgrebe
Reuss

NOT VOTING—51

Andrews, N.C.
Badillo
Blackburn
Blatnik
Brasco
Brown, Calif.
Carney, Ohio
Clausen, Don H.
Clawson, Del
Clay
Conyers
Crane
Dingell
Eshleman
Ford

Frelinghuysen	Mills	Rooney, N.Y.
Froehlich	Minshall, Ohio	Rostenkowski
Gilman	Moss	Shoup
Gubser	Murphy, N.Y.	Stubblefield
Gude	Nelsen	Sullivan
Heckler, Mass.	O'Hara	Symington
Howard	Patten	Teague
Jones, Tenn.	Powell, Ohio	Vander Jagt
Kluczynski	Preyer	Vander Veen
Kuykendall	Price, Tex.	Veysey
McEwen	Reid	Ware
Meeds	Roberts	Wright

So the resolution was agreed to.

The Clerk announced the following pairs:

Mr. Rooney of New York with Mr. Brown of California.
Mr. Sullivan with Mrs. Heckler of Massachusetts.
Mr. Rostenkowski with Mr. Ford.
Mr. Kluczynski with Mr. Vander Jagt.
Mr. Brasco with Mr. Minshall of Ohio.
Mr. Carney of Ohio with Mr. Gubser.
Mr. Dingell with Mr. Price of Texas.
Mr. Howard with Mr. Shoup.
Mr. Jones of Tennessee with Mr. Crane.
Mr. Stubblefield with Mr. Nelsen.
Mr. Wright with Mr. Del Clawson.
Mr. Patten with Mr. Frelinghuysen.
Mr. O'Hara with Mr. Gude.
Mr. Murphy of New York with Mr. Don H. Clausen.
Mr. Blatnik with Mr. Eshleman.
Mr. Andrews of North Carolina with Mr. Froehlich.
Mr. Badillo with Mr. Conyers.
Mr. Clay with Mr. Reid.
Mr. Meeds with Mr. Blackburn.
Mr. Moss with Mr .Gilman.
Mr. Vander Veen with Mr. Kuykendall.
Mr. Teague with Mr. McEwen.
Mr. Symington with Mr. Powell of Ohio.
Mr. Roberts with Mr. Ware.
Mr. Mills with Mr. Preyer.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Mr. DENT. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill—H.R. 2—to revise the Welfare and Pension Plans Disclosure Act.

The motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill H.R. 2, with Mr. Boland in the chair.

The Clerk read the title of the bill.

By unanimous consent, the first reading of the bill was dispensed with.

The CHAIRMAN. Pursuant to the rule, general debate will continue for not to exceed 4 hours, 2 hours to be equally divided and controlled by the chairman and ranking minority member of the Committee on Education and Labor, and 2 hours to be equally divided and controlled

by the chairman and ranking minority member of the Committee on Ways and Means.

Under the rule, the gentleman from Pennsylvania (Mr. Dent) will be recognized for 1 hour, and the gentleman from Illinois (Mr. Erlenborn) will be recognized for 1 hour, controlling the time for general debate for the Committee on Education and Labor.

The Chair now recognizes the gentleman from Pennsylvania (Mr. Dent).

Mr. Dent. Mr. Chairman, I yield 5 minutes to the gentleman from Kentucky (Mr. Perkins) the chairman of the full Committee on Education and Labor.

(Mr. Perkins asked and was given permission to revise and extend his remarks.)

Mr. Perkins. Mr. Chairman, I would be derelict in my responsibility if I did not take this opportunity to compliment the distinguished chairman of the General Subcommittee on Labor, the gentleman from Pennsylvania (Mr. Dent) on the untiring efforts and the extraordinary skill that made this legislation possible. The gentleman has done a marvelous job. In addition, he worked out with the acting chairman of the Committee on Ways and Means, the gentleman from Oregon (Mr. Ullman), a bill that coordinates the substantive and standard setting provisions of H.R. 2 with applicable provisions of the Internal Revenue Code. American working men and women owe a great debt to both these gentlemen for their great achievement. The fact will become evident as this debate continues.

Mr. Chairman, America's private pension plans, which had their beginnings almost a hundred years ago, have grown to enormous importance.

Roughly 36,000,000 workers are currently participating in some pension or retirement plan. The number of participants has roughly doubled in each decade since 1940. The combined resources of existing pension plans are estimated to be in excess of $150,000,000,000. They are increasing at a rate in excess of $10 billion annually.

Our private pension plans have served the needs of many workers very well. But the system is subject to one very simple defect. Too many people pay money into private pension plans year after year expecting eventually to receive retirement income, and they end up getting nothing.

And that, Mr. Chairman, is what this bill is all about. It is unfair and inequitable, and almost invariably, tragic as well, for workers to defer income from wages or salary in anticipation of retirement benefits which they will never get.

The workers who fail to get expected pension benefits have reason to feel cheated just as they feel cheated if, having worked a week or a month, their employer refuses to pay them.

In America today the loss of pension benefits, the frustration of workers' reasonable expectation, occurs in wholesale fashion.

It happens because of breaches of faith and self-dealing on the part of fund trustees and administrators; because of bad investments on the part of managers of pension plans; and because of inadequate funding.

It happens because plants close and companies go out of business, because companies are purchased or are merged. It happens because these things occur under circumstances which leave the workers involved without any rights and without any recourse.

Those of us in the Congress who represent districts where there are many mineworkers know very well the hardship and anguish caused by the failure of the United Mine Workers welfare and retirement plan to provide benefits that many miners and their beneficiaries had expected.

I have dozens of letters in my files from the years 1971 and 1972—letters seeking my assistance because of denials on account of rigid, arbitrary, and unreasonable eligibility standards.

The recent settlement of two class action suits against the welfare and retirement fund confirmed what may of us had believed for some time—that the eligibility requirements of that plan was being administered in an arbitrary and capricious fashion.

U.S. District Judge Gerhard Gesell had even earlier upheld charges of mismanagement brought against the miners' pension fund and had forced the trustees to step down.

The experience of miners with the UMW pension fund is not unique, however. Many Members of Congress have written the committee citing cases of this kind. The gentleman from Texas (Mr. Brooks) called my attention in January of this year to a case. One of his constituents had been cut off from the retirement benefits he had been receiving from his former employer. That company had recently been purchased by another company which felt no obligation in his behalf, and apparently had no legal obligation to do otherwise.

Daily newspapers regularly call our attention to tragic cases where benefits are lost and the solvency of pension funds destroyed by plant closings. The Newark, N.J., Star Ledger, on Thursday, January 31 of this year, reported on the expected closing of a brewery which in turn threatened the solvency of the entire New Jersey brewery employee welfare plan.

Just a week later, the New York Daily News of Wednesday, February 6, reported a case where the manager of a bankrupt Brooklyn laundry had used the employee retirement fund as collateral for a personal loan. The workers not only did not get paychecks and severance pay but they lost their pension rights as well.

That, Mr. Chairman, is what this bill is all about. It is a bill designed to provide improved Federal standards to make America's private pension system work.

Our committee on both the 92d and in this Congress has had a special task force which has been conducting a professional study of vesting, funding, portability, beneficiary insurance, fiduciary responsibility, disclosure and other aspects relating to the effectuation of private welfare pension plans. The bill, H.R. 2, which we are considering today, is the product of that task force and of the full Committee on Education and Labor.

The substitute which will be offered to H.R. 2 is of important significance. It brings together in one consolidated and coordinated piece of legislation, the combined efforts of the House Committee on Education

and Labor and the House Committee on Ways and Means. These committees have considered the regulations and standards being proposed in the substitute. Substantive differences have been worked out and agreed upon.

Regulations of private pension plans by the Secretary of Labor will for the first time be coordinated with the administration of the Internal Revenue Code by the Secretary of Labor. This coordination should greatly serve the interests of working men and women.

I am proud to say that substantively the substitute does not depart greatly from the committee reported H.R. 2, which as the Members of the House will recall, was so widely endorsed by both American business and labor unions.

This accomplishment has not been easy, Mr. Chairman. The subject of welfare and pension plans reform is a very complex and difficult one. In spite of the acknowledged need documented in public documents as early as the President's Cabinet Committee Report of 1965 and in the studies of the House and Senate Committees, it is not a simple subject on which to legislate. It has not been easy to draft a law which protects individual pension rights and at the same time, recognizes the voluntary nature of pension plans.

Each regulation has to be weighed against the burdens and pressures it imposes on the system. Each requirement has to be weighed against the cost increase which might result.

In addition to the weighing and balancing of substantive issues and costs, it has been necessary to consider the appropriate mechanisms through which Federal policy is to be administered. Difficult decisions of this kind have occupied us in recent weeks in the negotiations between the House Committee on Education and Labor and the House Committee on Ways and Means.

The successful result of those negotiations and that effort at coordination of the two committees has resulted in a substitute which I think merits the support of every Member of this body.

It is a modest bill. It does not purport to solve every problem. Further study and deliberation by our own committee and by other committees of the Congress will be necessary.

We do hope that we have provided relief for the worst inequities. Basically, our effort is designed to protect the long service employee participating in and contributing to a pension plan who would otherwise lose it. We seek to reduce the adverse pension effects of plant closings and bankruptcy on such people.

We seek to eliminate or substantially reduce unduly restrictive qualification requirements. We seek to reduce the probability of self-serving actions by pension fund administrators and trustees, to reduce the likelihood that such funds will go broke, and we seek to provide insurance against the possibility that they may.

The main features of title I of the bill are as follows:

FIDUCIARY RESPONSIBILITY AND DISCLOSURE

The committee bill replaces the generalized reporting requirements of existing law with disclosure and reporting requirements of a much more specific nature, which will give participants and beneficiaries a much better chance to protect themselves.

Similarly, since trustees and managers of plans have not always been above manipulating or investing funds for their own gain rather than in the interest of the beneficiary, fiduciary standards are established which will provide additional safeguards against mismanagement. Anyone exercising power or control, management or disposition with respect to money or other assets of an employee benefit fund would be required to act in a manner consistent with the fiduciary principles developed in the evolution of the law of trusts. The bill would impose on fiduciaries the same duty in his dealings with the assets of a fund as a prudent man would exercise in the same or similar circumstances and under like conditions.

He would be required to act consistent with the principles applicable to the administration of trusts and for the exclusive purposes enumerated in the benefit plan.

And doubts as to his culpability and vulnerability in courts are removed.

PARTICIPATION AND VESTING

Many, if not most workers covered by private pension plans have no right to anything until the very day they are eligible to retire. If for any reason, a worker's employment is terminated before he is eligible to retire—regardless of his length of service, regardless of his contribution and the contribution made in his behalf—it is very likely that that worker will never receive any benefits at all.

Another way of describing his situation is to say that he has no vested rights. Vesting has not occurred.

This bill provides minimum vesting standards. It helps a worker participant to achieve a nonforfeitable claim to benefits which have been earned by him and which have accrued to him. Even though his job is terminated, once he has a vested claim, he will be eligible for the same retirement benefits.

Vesting after a reasonable period of service is, I think, at the heart of the problem with the pension system. The bill requires the adoption of one of three alternatives—

First, full vesting after 10 years of covered service;

Second, a graded vesting standard under which the employee must be at least 25 percent vested in his accrued benefit after 5 years of covered service, with a gradual increase in this percentage in subsequent years so as to be 100 percent vested after 15 years; and

Third, a "rule of 45" under which an employee after 5 or more years of covered service must be at least 50 percent vested when the sum of his age and years of covered service total 45, with 10 percent additional vesting for each year thereafter.

No longer will it be possible for a person to pay into a plan for many years, if not most of his working life—only to be denied any retirement benefits because he had to leave his job before he reached retirement age, or before he had accumulated the required number of years of service.

FUNDING

The most vigorous vesting standards would be meaningless, however, and provide only empty promises in the absence of assets sufficient

to pay the claims against them. There must be money to pay the vested benefits to the workers when they are due.

Perhaps the best known case of a funding failure occurred in the 1963 shutdown of the Studebaker operation in South Bend, Ind. Some 4,500 workers lost 85 percent of their vested benefits because the plan had insufficient assets to pay the liabilities.

A recent Government study shows that in 1972, some 19,000 workers lost vested benefits because of the termination of insufficiently funded plans.

Funding refers to the accumulation of sufficient assets in a pension fund to assure the availability of money for payments of benefits due to the pensioners as obligations arise. The bill requires actuarily sound funding designed to lessen the risk to the beneficiaries by requiring every plan to be funded in a way which will amortize unfunded liabilities.

Annual contributions to pension funds must be sufficient to equal current service costs and to amortize past service costs over no more than 30 years—40 years for existing plans. Funds must be adjusted and losses experienced must be amortized.

TERMINATION INSURANCE

Unexpected financial or other difficulties, embezzlement, mismanagement, and simple honest mistakes can lead to premature termination of underfunded plans. Termination insurance will provide a backup for the funding requirements and safeguard workers who might otherwise be deprived of benefits or retirement credit.

It must be anticipated that some plans will fail—just as some banks fail. The purpose of the bill is to keep such failures to a minimum. Even after the bill has reached its full effect, some plans will inevitably terminate and fail because of economic downturns, business failures, and other unfortunate happenings.

For this reason, the bill establishes a termination insurance similar in operation to the Federal Deposit Insurance Corporation which will require a contribution from pension benefit plans which in turn will be paid out of those which are terminated.

Mr. Chairman, I have previously mentioned the unfairness and inequity caused by the failure of our private pension plans to insure the payment of expected retirement benefits. Fairness and equity are reason enough for us to favorably consider the bill before the House today. But there are additional reasons of a broader economic and social nature that support favorable action.

Only if private pension plans are effectively regulated will they be responsive to the need of workers for adequate retirement income. Only if they are effectively regulated can we expect extended coverage of more and more of our workers. Only through adequate regulation and minimum Federal standards, can we reduce pressure on the Social Security System and reduce the enormous costs of public welfare.

Because of the failure of the private pension system many retirees have come to be totally dependent on social security. As all of us know, social security was originally intended to provide only supplemental retirement income. Many of the older American citizens presently being helped by welfare assistance could have lived out their retire-

ment years in dignity and independence but for a failure of their private pension plans.

Mr. Chairman, we cannot afford not to reform the pension system. There is every justification for us to do so today.

Mr. Dent. Mr. Chairman, I yield myself such time as I may consume.

Mr. Brademas. Mr. Chairman, will the gentleman from Pennsylvania yield?

Mr. Dent. I yield to the gentleman from Indiana.

Mr. Brademas. I thank the gentleman for yielding.

Mr. Chairman, I rise in support of H.R. 2, the Employee Benefit Security Act of 1974.

Mr. Chairman, at the outset, I would like to congratulate my colleagues on the Committees on Education and Labor and on Ways and Means who worked with such dedication and energy for passage of this comprehensive pension reform legislation.

This bill is not only one of the most complicated measures to be considered by the House; it also falls within the jurisdiction of two separate House committees. And that we are able to vote on it this week is in large measure due to the close cooperation and hard work of the members of those committees.

Mr. Chairman, I would like to pay special tribute to the distinguished chairman of the General Subcommittee on Labor, the Honorable John Dent, who has performed yeomen service to this country in having worked so long and hard on this legislation. As a former member of Mr. Dent's subcommittee, I have worked closely with him on pension reform legislation, and I can, therefore, speak from experience when I say there is no Member of the House more committed to the passage of meaningful pension legislation than John Dent.

I want also to commend the ranking minority member of the General Subcommittee on Labor, the gentleman from Illinois (Mr. Erlenborn); the chairman of the Education and Labor Committee, the gentleman from Kentucky (Mr. Perkins); and the ranking minority member of the committee, the gentleman from Minnesota (Mr. Quie) for their cooperation and tireless support of this legislation.

In addition, Mr. Chairman, I want to commend the chairman of the Ways and Means Committee, the Honorable Wilbur Mills; the gentleman from Oregon (Mr. Ullman); and the gentleman from Pennsylvania (Mr. Schneebeli), the ranking minority member of the committee, for their efforts which have been so instrumental in achieving bipartisan House support for this bill.

Mr. Chairman, this is, indeed, an important day for the millions of men and women who have worked for comprehensive Federal legislation to protect their retirement benefits.

Although private pension systems have served the needs of many workers, they have failed countless others. The promise of pension benefits upon retirement has been an illusion for too many American working men and women.

The critical need for comprehensive pension reform legislation has been carefully documented by Mr. Dent's Labor Subcommittee. The record of his subcommittee includes testimony taken at hearings here in Washington and in other cities, including South Bend, Ind., from witnesses who have been the victims of broken pension promises.

Mr. Chairman, although this is not a perfect bill, it does provide a good beginning by establishing certain minimum standards to protect the retirement benefits of the more than 30 million Americans who are covered by private pension plans.

The bill will not solve all the problems of private pension plans nor does it propose to establish an ideal plan for all workers. Rather, it seeks to set up standards to which all pension plans must conform to assure that all workers will receive the benefits they have earned.

Mr. Chairman, I would like to address myself to a particular section of the bill which is of special importance to me and to the workers of the Third District of Indiana—the section which provides for plan termination insurance.

One of the principal reasons that many workers have failed to receive their pension benefits is that, because of shutdowns or some other reason, pension plans have terminated without sufficient assets to meet the vested benefits of plan participants.

Mr. Chairman, although there are countless examples of pension plan failures, the classic example grew out of the Christmas Eve shutdown of the Studebaker plant in my hometown of South Bend in 1963, when many thousands of workers lost their jobs and received only a fraction of the pension benefits they thought they had earned. Indeed, some workers received no pension at all.

Although the Studebaker plan was a liberal one which called for the systematic funding of liabilities, when the plan terminated, there were not enough assets available to pay all claims.

The Studebaker plan covered a total of 11,000 workers. Of these 11,000, some 3,600 had already retired or had reached the age of 60, and the fund had sufficient assets to continue to pay their pensions. But 4,000 other workers between the ages of 40 to 60 were left with only 15 percent of their vested benefits while another 2,900 under the age of 40, some with vested benefits, were left with nothing at all.

As a result of the shutdown, workers with as much as 40 years seniority were left with next to nothing and were far too old to start receiving new pension credits from another employer.

Mr. Chairman, although Studebaker is perhaps the most dramatic example of the effect of plant closings on workers' retirement benefits, it is by no means unique.

Last summer, the Department of Treasury and Labor released a joint study which indicated that during 1972 alone more than 15,000 pension plan participants lost retirement benefits because their pension plans terminated without sufficient assets to meet all plan obligations. These losses amounted to more than $40 million in anticipated retirement incomes. And several thousand of these victims of pension plan terminations actually lost their entire earned pensions.

Mr. Chairman, the legislation we are debating today will meet the problems of involuntary plan terminations represented by the Studebaker shutdown: First, by providing for minimum funding standards to assure that pension plans are accumulating sufficient assets to meet their obligations; and second, by providing for plan termination insurance to guarantee payment of all vested benefits in the event the plan has to terminate with insufficient assets to meet its obligations.

Mr. Chairman, the lesson of the Studebaker shutdown over 10 years ago in South Bend and the collapse of its pension fund has

taught us a critical lesson. Perhaps if such insurance had been available then, thousands of workers pensions would have been saved.

Mr. Chairman, enactment of comprehensive pension reform legislation is long overdue. The bill we are debating today is a good one, and I urge all my colleagues to give it their full support.

(Mr. Brademas asked and was given permission to revise and extend his remarks.)

Mr. MADDEN. Mr. Chairman, will the gentleman yield?

Mr. DENT. I yield to the gentleman from Indiana.

Mr. MADDEN. I thank the gentleman for yielding.

I wish to commend Congressman Dent, chairman of the subcommittee, for the outstanding work that he and his committee have accomplished in bringing this legislation before the Committee on Rules and also today before the House.

This bill will protect millions of families and individual workers from losing their pension or retirement benefits. Over the years, when employers, corporations, or industries closed operations, moved to new locations, failed under bankruptcy or fired employees, they escaped their obligation to carry out their pension or retirement contracts.

This bill would protect working men and women from being arbitrarily deprived of the comfortable and dignified retirements toward which they have worked so hard. The Private Pension Tax Reform Act is another landmark which will stand beside the National Labor Relations Act and the Fair Labor Standards Act which now protect the worker during his active career.

Pension safeguards are becoming increasingly important as the private plans grow and increasing numbers of Americans come to depend upon them as major sources of retirement income. An estimated 25 to 30 million Americans are covered today, and their number is expected to reach 42 million by 1980. Pension plan assets now exceed $150 billion and are expected to be $225 billion by 1980. Such funds have become a major source of investment capital.

Yet there is still no law governing the management of such funds or assuring that workers will receive the pensions they have been promised, even though workers may have been contributing toward them for many years.

Most employees—one estimate puts it as high as two-thirds—have no vested right to their pensions and may forfeit all benefits if they leave their firms or lose their jobs, no matter how long they have worked for a company. Employees may lose their pensions because of the failure of a firm—as with the Studebaker plant at South Bend, Ind.—or a merger of companies, or arbitrary termination of a plan by a company. Another hazard is insufficient funding, whether through accident or intention, which jeopardizes a pension plan's solvency and its ability to pay pension benefits as they come due.

The bill before the House would seek to remedy shortcomings and to encourage more companies to establish such plans by preserving tax advantages. Under this bill, a company offering a pension plan would be required to extend coverage to every employee who has reached 25 and completed 1 year of service. Vested rights would be conveyed in increments under any of three methods; most employees would have 100-percent vesting after 15 years' service. Adequate funding would be required for current and prior liabilities. Strict fiduciary

standards would be established for persons who manage pension funds. An insurance program against plan termination would be created. The Labor Department and the Internal Revenue Service would enforce appropriate provisions of the bill.

Other sections of the bill would apply to persons not covered by pension plans.

(Mr. Dent asked and was given permission to revise and extend his remarks.)

Mr. Dent. Mr. Chairman, we have before us today H.R. 2, the Employee Benefit Security Act of 1974. This landmark legislation represents the culmination of over 10 years of work on the part of our committee, and if I may be allowed a small measure of pride, ranks as a milestone in my legislative career. No more important piece of legislation will be before us this year. With the protections afforded to participants in this bill, we will extend for the first time minimum Federal performance standards for the single most important source of retirement security aside from social security. Those whose efforts fuel our economy will enjoy a Federal guarantee of:

First. Minimum vesting standards—Partial retirement benefits will be earned even by those who serve less than full careers with employers.

Currently, the vast majority of those covered by private pension plans can have no protection against forfeiture of their accrued benefits, in the event they leave coverage before attaining retirement age or fulfilling stringent minimum service requirements extending in some cases to as long as 30 years.

Second. Minimum funding standards—Defined benefits will be required to be funded currently as they accrue and past service credits will be amortized over reasonably short periods of time. These new requirements will help prevent the accrual of benefits without concurrent payments into the plan to pay those benefits when they come due.

Third. Termination insurance—Defined benefit plans will be covered by insurance to protect participants against the loss of benefits on account of plan terminations prior to completion of the funding cycle.

This provision will provide a back-up guarantee to every pension plan that, regardless of the economic fortunes of the companies sponsoring the plan, its obligations will be met.

Fourth. Fiduciary standards—All plans will be subject to new Federal trust standards which will delineate the rights and responsibilities of those who are covered by and those who deal with pension plans.

These standards, embodying existing trust concepts, will prevent abuses of the special responsibilities borne by those dealing with plans.

Fifth. Disclosure and reporting—All plans will be required to provide each participant with certain limit information, publish comprehensive financial and actuarial data and provide special reports on the occurrence of certain critical events. The availability of this information will enable both participants and the Secretary of Labor to monitor the plans' operations.

H.R. 2 was reported from our committee by a unanimous vote last session, but in the intervening period of time, events have overtaken

that bill and Mr. Ullman and I are offering today, an amendment in the nature of a substitute for H.R. 2, comprising H.R. 12906, as approved by the Committee on Education and Labor, and H.R. 12855, as reported by the Committee on Ways and Means.

H.R. 12906 contains all of the constituent provisions of H.R. 2, modified slightly to accommodate the broader scope of this substitute. As I view H.R. 12906, all of the purposes of H.R. 2 are served by its provisions but unlike H.R. 2, it does not stand on its own. It is a part of a larger measure which utilizes the jurisdictional resources of our committee, as well as the Committee on Ways and Means, to establish a protective framework of enormous strength. We have blended the civil contractual guarantees contained in H.R. 2 with the enforcement mechanisms of both the Labor and Treasury Departments. I view this substitute as a strengthened version of H.R. 2 and take pride in the work of both Mr. Ullman's and my own committee.

Others have expressed the view that the "overlap" between the bills—parts II and III of H.R. 12906 and subtitle A of H.R. 12855 contain comparable provisions—is a destructive rather than constructive approach. My only rebuttal to them is to point to the comprehensive scope of the bill and ask which of these two committees alone could accomplish what has been done through a joint effort.

First. Could Ways and Means have provided civil contractual remedies through the Internal Revenue Code?

Second. Without the vesting and funding standards in the Labor bill could we accomplish preemption of State laws in this field?

Third. Could we hope to coordinate the competing interests of Federal revenue and participants and plan contractual requirements?

My answer is that only through the method chosen by our two committees could we accomplish what is needed by the participants in pension plans. We have recognized the serious risks involved with the joint jurisdiction created as between the Labor and Treasury Departments. The substitute provides that in the area of the "overlap" both agencies will be required to issue joint regulations precluding them from developing inconsistent administrative practices. Beyond that, the statutory provisions are all but identical, save for technical variations. Whatever potential problems might exist have been more than adequately dealt with.

I commend to my colleagues the extensive explanatory material published in yesterday's Congressional Record dealing with the provisions of H.R. 12906. That material explains in great detail the committee's purposes and policy in approving that bill and directing that it be offered as part of a substitute for H.R. 2.

Mr. Gaydos. Mr. Chairman, will the gentleman yield?

Mr. Dent. I yield to the gentleman from Pennsylvania.

(Mr. Gaydos asked and was given permission to revise and extend his remarks.)

Mr. Gaydos. Mr. Chairman, I thank my colleague for yielding. It has been my pleasure to serve with him for the last 6 years. I appreciate his very meticulous analysis of this legislation.

In my particular district, where we have the greatest concentration of United States Steel and spin-off industries, we find a crying need for this legislation. We have example after example where pension

benefits have been denied to employees after years of service and high contributions of deferred wages into various pension plans.

Our hearings have proved the need for this bill; workers know and feel the need for this legislation; and all of us know in good conscience that the time has come to provide pension protection for all Americans.

Mr. Chairman, I rise in support of the committee substitute for H.R. 2.

I. INTRODUCTION

Growth of private pension plans.

In order to fully appreciate the need for this legislation, it is necessary to review the growth of the private pension system to date. The following statistics most vividly demonstrate the great expansion since 1940:

Employees covered

	(In millions)
1940	4
1950	9.8
1960	21
1970	30
1980 (estimated)	42

Additionally, the value of the assets of these pension plans have increased from $2.4 billion in 1940 to $150 billion in 1970, and are expected to increase to $250 billion by 1980.

Whereas, in 1950, 450,000 beneficiaries received $370 million in benefits, in 1970 the figures were 4.7 million beneficiaries and $7.4 billion in pension payments.

CURRENT FEDERAL LAW PERTAINING TO PENSION PLANS

There are only three Federal laws which can be considered as having some regulatory effect on such plans. These are:

Section 302 of the Labor-Management Relations Act (1947) provided fundamental guidelines for the establishment and operation of pension funds administered jointly by an employer and a union.

This was not intended to, nor does it provide standards for the preservation of vested benefits, funding adequacy, security of investment, or fiduciary conduct.

The Welfare and Pension Plan Disclosure Act of 1958 was enacted for the purpose of protecting the interest of welfare and pension plan participants and beneficiaries through disclosure of information with respect to such plans by requiring the plan administrator to file with the Secretary of Labor and to make available to participants and beneficiaries the annual report of the plan.

This law was amended in 1962 to make theft, embezzlement, bribery, and kickbacks Federal offenses if they occurred in connection with welfare and pension plans. The amendments also required bonding of plan officials and provided limited investigatory and regulatory power to the Secretary of Labor.

Experience since 1962 has demonstrated the weakness of this law in its limited disclosure standards and the absence of fiduciary standards. The main shortcoming of this law is its reliance on the individual employee to police the management of the plan.

The Internal Revenue Code provides certain tax deduction benefits for employers for contributions made to a plan as well as tax ex-

emption for the investment earnings on such plans. To be eligible for such "qualified status" the plan must: first, be for the exclusive benefit of the participants; second, exist for the purpose of distributing the corpus or income to the participants; third, be established in such a manner as to make it impossible for the employer to use or divert funds before satisfying the plan's liabilities; and fourth, not discriminate in favor of officers, stockholders, or highly compensated or supervisory employees.

Since the primary function of this law is to produce revenue and prevent tax evasion, enforcement consists in the Internal Revenue Service's grant or disallowance of "qualified status" to a pension plan. Accordingly, there is only a very limited protection for the rights of the participants and beneficiaries of a plan.

II. PURPOSE OF THIS LEGISLATION

Very succinctly the purpose of this legislation is to require:

That plan administrators will adhere to certain fiduciary standards when handling the affairs of the plan;

That the plan administrator will provide in a meaningful manner the necessary information as to the current status of the plan on an annual basis;

That employees be included in pension plans at or near the inception of their employment;

That employees will earn nonforfeitable rights in the plan after a short period of employment;

That the employer make contributions to the plan to cover the vested rights acquired by the employees; and

That, in the event of plan termination, sufficient assets will be available to meet the plan's obligations to its participants and beneficiaries.

III. ANALYSIS OF THIS LEGISLATION

To go into further detail, the following are the significant provisions of this legislation:

Fiduciary responsibility and disclosure.

This part of the proposed legislation would cover all private employee benefit plans under commerce clause jurisdiction except:

Plans of Federal, State, and local government.

Plans established and maintained solely for the purpose of complying with workmen's compensation or unemployment compensation disability insurance laws.

Plans established and maintained outside the United States for the benefit of non-U.S. citizens.

Certain church plans.

Unfunded deferred compensation plans for top executives.

Plans subject to this part would be required to conform to the fiduciary and disclosure standards no later than 6 months after passage.

With respect to fiduciary standards, anyone who exercises any power of control, management, or disposition with regard to a fund's assets or who has the authority to do so or who has the authority or responsibility in the plan's administration must act "solely in the interest of the participants and with the care, skill, prudence, and diligence

under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims."

A fiduciary would be required, with certain exceptions, to diversify investments so as to minimize losses.

A fiduciary would be prohibited from dealing with such fund for his own account acting on behalf of any party adverse to the interests of the plan or its participants, receiving any personal consideration from any party dealing with the fund in connection with any transaction involving the fund, transferring property to any party in interest for less than adequate consideration, and permitting the acquisition of property from any party in interest for more than adequate consideration.

The administrator of a pension or welfare plan would be required to publish a description of the plan setting forth the identity of the administrator, the benefit schedule, the plan's vesting provisions, and the procedure to be followed in presenting a claim as well as for appealing claims that were denied.

The administrator would also be required to publish an annual report setting forth in detail substantial financial information as to the assets of the plan, the benefits paid, number of employees, receipts and disbursements, known party-in-interest transactions, loans in default, et cetera, as well as an audit and opinion of an independent qualified public accountant and an actuarial statement.

Upon request, the administrator would be required to furnish a participant information as to his or her rights and the amount of any nonforfeitable benefit.

The Secretary of Labor would have authority to investigate any plan and would have authority to bring any legal action to enjoin any act or practice which appears to him to violate the law. Participants and beneficiaries would also have the right to institute such proceedings.

VESTING

Vesting refers to the nonforfeitable right or interest which an employee participant acquires in the pension fund. The benefit credits may vest in an employee immediately, although in most cases participants do not become eligible for vesting of benefits until a stipulated age or period of service, or a combination of both, is attained.

At present, only one of every three employees participating in employer-financed plans has a 50 percent or greater vested right to his accrued retirement benefits. Moreover, 58 percent of covered employees between the ages of 50 and 60 and 54 percent of covered employees 60 years of age or over do not have a qualified vested right to even 50 percent of their accrued retirement benefits. Extreme cases have occurred in which employees have lost retirement rights at advanced ages as a result of being discharged shortly before they would have been eligible to retire.

Title I, part 2 of the proposed legislation would require minimum vesting standards for all private pension benefit plans including profit-sharing plans which provide benefits after retirement except;

Federal, State, and local plans;

Certain church or fraternal society or association plans;

Plans established or maintained outside the United States for workers who are non-U.S. citizens;

Executive deferred compensation plans;

Secondary plans providing class year vesting; and

Keogh plans.

Plans subject to this part would be required to include in the plan an employee after 1 year's service or age 25 whichever occurred later, except for a plan which provided that after 3 years of service or age 25, whichever is later.

Every plan subject to this part would be required to adopt one of the following vesting rules:

One hundred percent vesting after 10 years of service; 25 percent vested after 5 years of covered service which an annual increase of 5 percent for the following 5 years of covered service, leading to 100 percent vesting after 15 years; and 50 percent vested when age plus covered service equals 45, with an annual increase for 10 percent until 100 percent vesting is reached.

A plan would be allowed to provide for vesting of benefits after a lesser period of time and in a greater amount than required by any of the above three rules, and a plan could change its vesting rules at any time provided that the vested benefits not be delayed or reduced for participants in the plan at the time of the change.

With certain exceptions, such as service prior to age 25, an employee's entire service with the employer contributing to or maintaining the plan shall be considered in computing the employees period of covered service.

Plans in existence on January 1, 1974, shall conform to the vesting requirements of this part with respect to plan years commencing after December 31, 1975, except that in the case of multi-employer plans subject to collective-bargaining such conformity shall occur between December 31, 1976, and December 31, 1980, depending when the bargaining agreement terminates within such period.

Plans adopted subsequent to enactment must conform to the vesting requirements at the commencement of the first plan year.

In view of the fact that requiring plans in existence on December 31, 1973 to conform to one of the three vesting rules provided by this legislation might subject the plan to substantial additional costs to provide for the increased vesting, which might lead to reduced benefits or possibly plan termination, a transitional rule is provided by title II of the legislation whereby such a plan would have reduced vesting requirements for the first 5 years it is subject to this part of the legislation. This would allow a plan to provide at least 50 percent of the required vesting pursuant to the vesting rule applicable to the plan for the first year with the percentage increasing 10 percent per year so that the vesting rule would be complied with by the end of the sixth year.

FUNDING

Funding refers to the accumulation of sufficient assets in a pension plan to assure the availability of funds for payments of benefits due to the employees as such obligations arise.

Pension plans which are qualified under the Internal Revenue Code must meet certain minimum funding requirements by irrevocably

setting aside funds in trust or through the purchase of insurance contracts. Contributions to such plans must generally be at least large enough to pay the normal pension costs plus the interest on unfunded accrued liabilities which generally are attributable to the past service of the covered employees. This minimum funding requirement is not adequate, however, as it is designed only to prevent the unfunded liabilities from growing large and does not require any payment to reduce the amount of the outstanding unfunded liabilities which may be substantial. Without mandatory funding of past service liabilities, a pension plan may never be able to meet its pension obligations to its employees.

Title I, part 3 of the proposed legislation would apply to all pension benefit plans subject to the vesting provisions except for profit-sharing and other individual account plans not providing for employer contributions. It would require each plan to provide a minimum level of contributions equal to the normal cost of the plan for the year—which it currently must make pursuant to Internal Revenue Service requirements—plus an amount—for plans in existence on January 1, 1974—to amortize in equal amounts the unfunded liabilities over a 40-year period. In the case of plans which come into existence after January 1, 1974, the period would be 30 years except in the case of a multi-employer plan it would be 40 years.

Where subsequent amendments to the plan result in increases in the unfunded liabilities, such increase is to be amortized by equal annual payments over 30 years—40 years in the case of a multi-employer plan.

In view of the fact that assets of the fund may appreciate or depreciate in value over the life of the plan, any appreciation in value or depreciation in value must be amortized over a 15-year period.

There is also provided by the legislation an alternative method of funding which is to be used if it brings a higher level of funding in any year than would the basic funding standard.

PLAN TERMINATION INSURANCE

A study of pension plan terminations for the year 1972 prepared by the Departments of Labor and Treasury disclosed the following:

There were 1,227 plans terminated involving 42,000 claimants; 19,500 claimants in 546 plans lost benefits; the claimants which losses represented eight-one-hundredths of 1 percent of all workers covered by private pension plans; 8,500 of the claimants with losses were either retired, eligible for retirement or fully vested; the total present value of the lost benefits amounted to $48.7 million for all claimants and $34.4 million for those retired, eligible for retirement or whose rights were fully vested; plans that were at least 5 years old at time of termination accounted for most claimants with losses; and half of the claimants with losses were in plans of unprofitable employers.

These statistics indicate that while compared to the total number of employees covered by private pension plans those who experienced losses represented a very minor percentage, the fact remains that there were 8,500 persons who experienced losses who were either removed from the labor force by retirement or ready to retire or whose benefits were fully vested. Obviously their loss was very substantial and may well have had a catastrophic effect on their well-being.

While the vesting and funding provisions which are required by this legislation should go a long way to minimize the possibility of loss from future plan terminations, still and all, as long as a plan contains unfunded accrued liabilities, there is the distinct possibility that termination of a plan with such unfunded liabilities will result in a loss of vested benefits to participants and beneficiaries of the plan.

Accordingly, title I, part 4 of the proposed legislation provides a method to protect participants and beneficiaries from loss of benefits in the event the plan terminates. It establishes a Pension Benefit Guaranty Corporation with the Department of Labor, with the Board of Directors consisting of the Secretary of Labor and two officers or employees of the Department of Labor. The purpose of the Corporation is to:

Encourage the continuation and maintenance of voluntary private pension plans to the benefit of their participants;

Provide for the timely and uninterrupted payment of pension benefits to the participants and beneficiaries under all insured plans; and

Minimize over the long run the premiums charged by the Corporation.

All plans covered under the funding provisions of the bill and which cover more than 25 participants—where at least 10 have obtained nonforfeitable benefits—at all times during any period of 5 consecutive plan years, and with assets equal to at least 10 percent of the present value of insured benefits are covered and required to pay premiums.

The Corporation is required to establish two separate funds, the single employer primary trust fund for single employer plans and the multi-employer trust fund for multi-employer plans.

The Corporation shall proscribe separate premium schedules for each trust fund and is authoribed to revise any premium schedule whenever it determines such revision is necessary, but such revision may only take place if Congress approves.

The Corporation is authorized to pay participants and beneficiaries in the event a plan terminates according to a formula which is intended to protect the participants and beneficiaries from a loss of benefits as a result of inadequate assets to meet the vested liabilities of the plan.

Obviously the purpose of plan termination insurance is to protect the participants and beneficiaries from any loss of benefits, and where the employer contributing to the plan which terminates is insolvent, there is no claim against the employer for the amount of funds expended by the Corporation. But where the employer is solvent, the Corporation is authorized to recover any funds expended up to 50 per cent of the net worth of the employer.

Such a procedure is necessary to prevent a solvent employer from terminating a plan and transferring the amount of the unfunded vested liabilities to the Corporation. Absent this procedure the solvent employer would be able to renege on his agreement to contribute to the plan with impunity.

The premiums charged by the Corporation and benefits paid out by the Corporation shall apply to plans subject to the part of the legislation for plan years commencing after June 1, 1974, except that in the case of a multi-employer plan, it shall apply during the period December 31, 1976 and December 31, 1980, depending on the date which the collective-bargaining agreement relating to the plan expires.

IV. CONCLUSION

The need for this legislation is abundantly clear. If we are to provide financial security for the increasing percentage of the work-force which will be attaining retirement age in the years to come, it is incumbent on the Congress to pass this legislation at this time.

Mr. Chairman, I include the following statement from the steelworkers legislative appeal:

H.R. 2—PRIVATE PENSION REFORM

THE CASE FOR PLAN TERMINATION INSURANCE ADMINISTERED BY A PUBLIC CORPORATION

One of the essential protections for pension beneficiaries is in Part 4 of H.R. 2 which provides for public insurance of pension plans against the risk of termination. Currently, no such insurance program is available in the private sector. Furthermore, no such reinsurance system is feasible unless it is a mandatory one.

Private insurance is based upon the principle of voluntarism and screening out of high risk cases. Neither of these principles can assure an adequate program of reinsurance for the private pension plan system. The basic weakness in the system—namely, termination of some plans—requires a mandatory social insurance program.

Congressman Erlenborn, who has voiced objection to even the concept of a reinsurance program on the basis that it is not needed, attempted in the Labor Committee to convert the public corporation concept in H.R. 2 into a quasi-public (quasi-private) corporation controlled by private sector groups. He probably will make similar attempts when the bill reaches the floor. Since the pension reinsurance system can function only under government mandate, it is inconsistent to put its control in private interest hands. Therefore, we oppose any such attempts.

A number of arguments have been made against a social insurance system administered by a government corporation chaired by the Secretary of Labor.

1. Allegation: Premium rates would be higher

It is charged that the Secretary of Labor would direct the insurance corporation to liquidate immediately the investment assets of terminated plans. Since plans may more likely terminate in periods of economic downturns, the value of such assets may be depressed. Immediate dumping would, therefore, result in a low return thereby putting a greater strain upon the trust account and the premium contributions thereto.

Response

H.R. 2 provides the Secretary with the option of retaining such assets in order to minimize increased premiums. There is no assurance that the judgment of a private board of directors on this matter would be any more sound than that of the government corporation. Furthermore, pension plans may terminate irrespective of economic conditions; in some cases terminations are caused more by reasons unique to the particular plant or industry. Hence, the general market conditions would not affect the liquidation of the assets of the particular terminated plan.

Furthermore, during a downturn, there may be no indication of its duration. Hence, the reinsurance corporation, whether publicly or privately directed, will have to make its decision to liquidate dependent upon its own resources to meet the worker benefit payments of the terminated plan.

2. Allegation: The reinsurance trust account should be operated like the FDIC and NLRB

The charge is made that private representatives should be named to the corporation in order to keep it consistent with other types of government entities.

Response

The Federal Deposit Insurance Corporation is a public corporation, not a quasi-public corporation as contemplated by the Erlenborn amendment. Its Board of Directors does not represent specific self-interest groups. Membership based upon interest groups would create a conflict-of-interest situation which would be injurious to pension beneficiaries.

Reference to NLRB commissioners is also irrelevant because the NLRB is a quasi-judicial body established to apply and interpret the NLRA. In performing that function, it was deemed necessary and fair that both management and labor interests be represented in the decision process of what is essentially an adversary situation. Reinsuring pension plans is not an adversary proceeding.

The AFL–CIO is not advocating that labor representatives be selected as actuarial experts for membership on a multilateral board. It is sufficient that the workers' interest be recognized by placing the responsibility for the administration of termination insurance in the hands of the Secretary of Labor.

3. Allegation: The public corporation would be unable to attract qualified personnel

Response

The social security system has not been plagued by such a problem in attracting qualified personnel, and there is no reason to suspect that the situation will be different for the pension insurance corporation.

Furthermore, qualified actuaries and other needed experts will best and most objectively be able to administer the reinsurance system in the public interest from a civil service stature. They would not be able to do so as an adjunct of the private insurance or banking industry as would be the orientation of the employees of a quasi-public corporation.

4. Allegation: Pension fund investment portfolios would be unduly regulated by a public corporation

Probably the primary objection to a public corporation administering the reinsurance system is the fear or anticipation of government regulation. It is alleged that government officials would question the character of some investments both as to their reliability and rate of return. Pension trustees would be hampered by such public oversight.

Response

The bill does have sections governing the investment policies of plan trustees relative to "prudent man" judgments and conflict-of-interest transactions. There are also prohibitions on the amount of stock to be held by the sponsoring employer's corporation. In addition, regulations regarding actuarial standards would limit many actuarial assumptions now being made by plan trustees. All these restrictions and government regulations pertaining to them are in other sections of the bill to be administered by the IRS and Department of Labor.

It would be inconsistent to allow the plan termination insurance program to be administered without relationship to these regulations. But this is what the advocates of the quasi-public corporation really want. They fear that the public corporation, in assessing the premiums, would evaluate the pension plan assets.

Yet objective evaluation is the very goal which we seek for both the beneficiaries of the pension plans and for solvent employers who must continue to pay premiums to cover terminated plan liabilities. We think that since this insurance system is more properly a social one, its administration is also more properly public so that the public interest can be served.

If bank deposits can be not only reinsured but also their reinvestment and use by banks be regulated by government regulations, surely so too can the pension deposits of workers be reinsured and their investments regulated.

5. Allegation: Secretary of Labor would have an undue influence in the stock market

This argument is just the opposite of the Allegation No. 1. It alleges that the Secretary could withhold liquidation to serve other government purposes, such as the control of prices.

Response

While such a purpose may actually be positive at times, the effectiveness of such control is unrealistic. The Secretary of Labor is under the duty of investing the assets of the insurance corporation in a manner calculated to best promote its purposes: that is, to make good on all vested liabilities of pension plans at the least possible cost to the solvent plans paying premiums.

The purposes of the corporation would not be promoted by rapid liquidation of any security since any such action—regardless of timing with respect to the business cycle—would reduce the amount realized. Similarly, taking an action unrelated to the purpose of the corporation would, of course, not be promoting its interests, and would in fact be in violation of the law. To allege that the Secretary will engage in these practices is to allege that he will be guilty of impeachable offenses.

The market power of the insurance corporation will be miniscule in relation to the assets of pension funds, insurance companies, savings and loan associations, mutual funds, banks, and trusts. Over a period of years the assets of the corporation might, at most, accumulate to 1/10 of one percent of the total market. Even at that improbably high figure, the maximum market impact of any action of the corporation would be miniscule. Many hundreds of other investing agencies would individually have a far greater influence in the market.

When the Federal Reserve Board changes the rediscount rate up or down, the immediate impact on the stock market is measured in the tens of billions of dollars. A pessimistic or optimistic forecast of crops by the Department of Agriculture, price index announcements by the BLS, offering of new securities by the Treasury, estimates of the federal deficit, all have influence on markets in comparison with which the power of the pension insurance corporation would be puny indeed.

CONCLUSION

Administration of plan termination insurance is a public responsibility. H.R. 2 rightfully places that responsibility in the Department of Labor. We urge the rejection of any amendments to convert the reinsurance corporation into a quasi-public corporation controlled by private interest groups.

Support H.R. 2 with no amendments.

Mr. Erlenborn. Mr. Chairman, I yield such time as he may consume to the gentleman from California (Mr. Pettis).

(Mr. Pettis asked and was given permission to revise and extend his remarks.)

Mr. Pettis. Mr. Chairman, I would like to ask the chairman of the committee a brief question.

As I understand it, Mr. Chairman, church plans under the provisions of this bill are exempt from the new participation, vesting and funding provisions of the bill.

Are they also exempt from the fiduciary and reporting registration provisions of the bill?

Mr. Dent. The fiduciary and reporting provisions are in part 1 of subtitle B of title I. They, of course, cover all of the fiduciary and reporting provisions, and since church plans are exempt from the provisions of that part, it is clear that church plans are not subject to these new fiduciary and reporting provisions.

Mr. Pettis. I thank the gentleman.

(Mr. Erlenborn asked and was given permission to revise and extend his remarks.)

Mr. Erlenborn. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, as I mentioned earlier in the debate on the rule, our subcommittee has been for 5 or 6 years spending a good deal of its time in this area of private pension reform. Over this period of time there has been a good deal that we have seen in newspaper accounts, press

releases by Members of Congress, and so forth, as to the horror stories that exist in the field of private pensions.

Very frankly, many of these horror stories were greatly exaggerated. Some, for instance, coming from the efforts of the Committee on Labor and Public Welfare in the other body suggested that only 1 out of every 10 plan participants now participating in private pensions would ever get any benefits whatsoever.

We can look to actual studies of the question of who is going to get pensions and who is not.

There was a study that was commissioned by the Department of the Treasury and the Department of Commerce that showed in the neighborhood of 66 percent of present plan participants would draw benefits from the plan in which they are now participating. Another 20 percent would terminate without vested rights, yet young enough to acquire vested rights in another plan; so somewhere in the neighborhood of 86 percent would ultimately get some benefit from the private pension system.

Although I question the horror stories, there is no question that as a result of extensive studies by our subcommittee there are problems existing in the private pension system. Plans do have difficulties. There are some that do not have any sort of decent vesting standards. There are some that have no decent funding standards; so there is certainly an area, a reasonable area within which legislation is necessary and can do a job to protect the working men and women of this country.

I think the legislation that is brought before us today addresses those very real problems. It does not necessarily address itself to the kind of horror stories that we have heard, and I think rightfully so.

I think we have done a good workman-like job in fashioning legislation in this area.

I will confine my comments to H.R. 2, as reported by the Committee on Education and Labor. Time will be made available for members of the Committee on Ways and Means to discuss the part of the bill reported by them.

In H.R. 2, the first and very noncontroversial part of the bill has to do with disclosure, reporting, and fiduciary standards. At the present time the Department of Labor under the Welfare and Pension Plan Disclosure Act does have jurisdiction in the area of reporting and these reports are available to the public; so a certain amount of disclosure is available.

Building upon this present jurisdiction of the Labor Department, we expand the requirement for those operating private pension plans to make available information in the form of reports to the Department of Labor.

In addition, we are providing that in meaningful layman's language those who are participants in private pension plans be given information as to what their plan provides, what kind of benefits they can rightfully expect.

As a matter of fact, if people do have this sort of meaningful information made available to them, I think some of the unwarranted expectations that gave rise to the horror stories that people were not getting what they anticipated will be a thing of the past, because many of them are based on what people anticipated getting that they never were entitled to, because they did not honestly know what was in their

pension plan; they did not honestly know what their rights would be.

In addition, we at the present time have no national fiduciary standards that would be applicable to those who stand in the fiduciary relationship to the plan and plan participants. In this first part of our bill, we do provide a set of national fiduciary standards.

Getting on to the more relevant and important parts of the bill, we have in this legislation before us minimum vesting standards. In the initial stages of considering this legislation, there were many different suggestions. Some said that we ought to have straight years of participation as a vested standard, and it was suggested 10 years would be a reasonable length of time.

The gentleman from Pennsylvania (Mr. Dent) in his original legislation provided such a minimum vesting rule. There were others, noticeably in the other body, who suggested that graded vesting would be a better way of doing it; that is, to start with some percentage in the beginning and over a period of time be graded into 100 percent pension rights.

So, it was proposed in the other body a graded vesting return of 8 to 15 years, starting with 30 percent vesting at the end of 8 years with 10 percent each additional year until at the end of 15 years a person would be 100 percent vested.

I think it is important to point out at this point how people can misconstrue this. I know that when they look at vesting and we talk about 10 percent, 30 percent, 50 percent, they believe we mean that percentage of the final pension. But, it is important to note that that is not what is meant. If a person is 50 percent vested, that means that he is credited with one-half of the time that he has accumulated as a participant in the plan.

For instance, if the man is 50 percent vested at the end of 10 years participation, it means he gets credit for five years and he builds his pension credits on the basis of that. So, there has been, I think, a misunderstanding as to what vesting really is.

One additional rule for vesting that was proposed by the administration is the rule of 50. The rule of 50, briefly, is this: When a person's age plus his years of participation added up to 50, he is 50 percent vested. That is, he gets credit for half the time he has participated in the plan. Each additional year thereafter, he would get an additional 10 percent until five years after the rule of 50's full application, he would be 100 percent vested.

In our consideration, it became apparent, I think, to the gentleman from Pennsylvania (Mr. Dent) and to me, that there was no magic as to any one of these types of vesting. It really was very difficult to accept the argument that all plans—150,000 or 200,000, however many there might be existing in the United States—ought to have straight years as a vesting standard or ought to have graded vesting, or ought to have an age-weight vesting—that is, a rule of 50 or some like rule.

So, we agreed before reporting the bill that we would make available to the plans that are existing and to any that may form after the passage of this law an option as to the type of vesting they might like; either straight years, in which case it would be 10 years, and the number could be fewer but a minimum of 10 years; or graded vesting, and we reported out 8- to 15-year rule which has since been modified

to 5- to 15-year rule; or age-weight vesting, and we adopted a modified rule of 45.

So that now, under this bill, we have three options for vesting. A plan can tailor its vesting standards within the proscriptions as to minimum standards in a way that will best satisfy its needs and the needs of the participant in that particular plan.

We give them these options instead of trying by law to put them all into the same mold, which may be all right for some, but not good for others.

Mr. Chairman, as to funding, it became apparent, under our present regulations relative to funding of pension plans at the Federal level, which is wholly within the Department of Treasury and the Internal Revenue Code, that so far the Federal Government has been worried primarily about overfunding. The Treasury Department is worried about the impact on the Treasury or putting in too much money in any one year.

So that is really all the Government has been worried about up to the present time. What we now are worried about is the protection of the worker, for minimum funding standards. That is what we will provide for in the bill before us.

So each employer who is holding out a promise to his employees that the operation of this fund will provide a pension in the future will be required to amortize the unfunded portion of his liabilities in that fund over a reasonable length of time. There are different standards for differing types of unfunded liabilities, but generally speaking, a 30-year amortization is provided. As to multiple employer pension plans, a 40-year amortization is provided. This means that there will be a better chance that the funds will be in the pension trust at the time the employee seeks to get his pension or at the time the trust may terminate because of the employer's inability to continue in business or for whatever reason the plan may terminate.

It has been my argument that this application of minimum funding standards for the first time in Federal legislation will help to eliminate the need for the other provision which is in part 4 of title I, and that is termination insurance.

Lastly, Mr. Chairman, I would like to talk about termination insurance. This is the only portion of the bill upon which I have disagreement with the gentleman from Pennsylvania.

Termination insurance holds out the hope that everyone who participates in a pension plan will get the full pension that is offered to him or that has been promised to him. It has some hazards, however.

The only way that one can make termination insurance something other than a dumping ground for the obligations of the employer is to put some sort of obligation on the employer. At the present time the legal foundation of pension plans is that the employer sets up a pension trust and promises to make periodic contributions into that trust. If there are sufficient assets, the employee will get the pension that has been described; if there are not, he does not get it; he gets something less. But the employer up until the present time generally has not made a promise to pay the pension, only to make periodic contributions.

In this way the employer has no obligation under the law for the total amount of the promised pension benefits. It is because of this

device that we have been able to build the large private pension system that exists today. I can say very confidently that if the law had required the employer to guarantee the payment of the pension 15 or 20 years ago when that system began to grow, it would not have grown in the proportions that it has up until the present time.

With termination insurance we are now going to change the basic legal obligation of the employer, because under the concept of employer liability we are saying to the employer, in essence, as follows: "You no longer make a promise to only make periodic contributions, based upon the actuary's computation of what your obligation is; under this law if there is not sufficient money in that pension trust, for whatever reason whatsoever, your assets will be liable toward the payment of the pensions to make up the difference between what is in the pension trust and the total of the pensions that have been earned at the time of termination."

For whatever reason, if there are insufficient assets, the employer will be liable.

That means, if the pension trust assets fall in value because of poor judgment on the part of the trustees, the employer will have to make up the difference, or if we have a recession or a depression and the assets, which are generally invested in marketable securities, such as stocks and bonds and so forth, reduce in value while the pension promises remain at a stable level, there is going to be that big gap between the assets and the promises, and the employer's assets will be liable for that difference. We will have in effect made the employer an insurer of the value of the trust assets.

If the trust does not produce the funds necessary, then the employer will be personally liable.

As I say, it is difficult to envision termination insurance without some employer liability, because without that another difficulty arises; that is, the employer looking at this new insurance corporation which guarantees the payment of pensions could say, "Why should I continue to make these contributions to the pension trust, because if I terminate my plan today, the insurance company will make payment?" So we have this real dilemma upon the horns of which I find myself impaled.

I do not think insurance will work without employer liability and I do not think insurance with employer liability will be good for working men and women.

Why do I say this? I say it because of this reason: If you are a good business manager and are managing a business that has no private pension system today and this is enacted into law and you know you will have your assets liable to the payment of pensions, you will be very unlikely to decide to choose a defined benefit pension system for your employees. You will have other options. You could go to money purchase, or you could go to profit sharing. But I submit that the working men and women of this country will be ill served if we discourage the defined benefit pension system. I say that because it is only this system that guarantees people when they retire that they will have a certain set income month by month whether they live for 5 years or 50 years after their retirement.

If we force the employers to choose instead the money purchase plan, which is a savings account, or the profit-sharing plan, we will

make it impossible for those who will retire to have this security in their retirement years.

However, I wish we would wait for a few years and see how these first faltering steps we have taken into the private pension regulation field work. But barring that, the least we can do is to change the pension termination insurance concept that is in the bill.

One of the difficulties I perceive is that the provision in H.R. 2 will set up this pension termination insurance wholly within the Department of Labor. The Secretary of Labor and two of his employees will constitute the board. You understand in the future when pension plans terminate the assets will be assumed by the insurance company. That means after several terminations of substantial plans the Secretary of Labor will have large blocks of private securities in his control for investment purposes. So what would a political appointee do in determining how he would invest or reinvest these private assets? I submit we ought not to wait to find out the answer by giving authority to the Secretary of Labor to do this. I submit that it would be better to have representatives of organized labor and of the business community and representatives of the public generally form a board to operate the pension termination insurance and to make these determinations as to the investment of private funds and private securities in the private market free from political influences. I will offer an amendment for that purpose.

Mr. GAYDOS. Mr. Chairman, will the gentleman yield?

Mr. ERLENBORN. I yield to the gentleman from Pennsylvania.

Mr. GAYDOS. Mr. Chairman, I thank my colleague for yielding to me, and I join with and commend my colleague for his remarks at the beginning of his statement. I think they were very clear and concise, and I think will be informative to the Members who are listening.

However, Mr. Chairman, I am diametrically opposed to the observations made by the gentleman from Illinois regarding termination insurance.

Do I understand my friend and colleague, the gentleman from Illinois (Mr. Erlenborn) correctly when the gentleman says that he advocates that we do nothing with termination insurance for the next 2 or 3 years?

Mr. ERLENBORN. Mr. Chairman, I will answer the gentleman from Pennsylvania by saying that if I were left the right to make that decision my choice would not be to enact termination insurance at this time. This is based on the fact that recent studies show that only 8/100ths of 1 percent of plan participants are subject to losing anything as a result of plan termination, and those who do have lost on an average no more than $2,500 total—not annual income, but $2,500 total. This shows the scope of the problem as being realtively small. And if it is relatively small before we have any Federal regulation of private pension plans, and before we have had minimum funding standards, I submit that we can anticipate that it will shrink and become even smaller.

To solve this relatively small problem by putting in the employer liability provision in the pension, the insurance provision will precipitate termination of plans so that they can avoid this liability. It will discourage the improvement of plans because as soon as you grant an increase in pension benefits you increase the unfunded liabilities in

the pension trust, therefore increasing the employer's personal liability, and it will therefore discourage present employers from improving the pensions that they presently operate.

Mr. GAYDOS. Mr. Chairman, if the gentleman will yield further, I again congratulate the gentleman for a very clear presentation of this position, but may I inquire of the gentleman from Illinois as to what his remedy, if any, would be regarding those who find themselves, particularly under existing situations and a potential unemployment problem, further the effects of a conglomerate closing of a pension plan, or where economic conditions dictate that steel plants close?

Mr. ERLENBORN. I am happy the gentleman from Pennsylvania asked that question because there are other provisions in the bill that meet these difficulties.

First of all, I have already mentioned the minimum funding standards that will help assure the money will be there when the plan terminates. Second, there are provisions in the bill that specifically prohibit diluting of the assets of a plan that becomes merged with another plan because of a business merger. And, third, there is a provision for equitable distribution of funds upon plan termination.

This became quite apparent to us as being a necessity when viewing some of the difficulties that were brought before our committee. For instance, in our hearings in Washington we were advised of what one paper pulp mill experienced. They had a pension trust that was overfunded; it had $1 million more in assets than were needed to pay the pensions. There was a strike and the result of that strike was to increase the pensions by about 50 to 80 percent over what they had been before. Immediately that plan became underfunded by over half a million dollars. At this point the company was forced to go out of business. Those who were already retired and those who were eligible for early retirement got much, much more than they would have before the benefits were increased. Those who were not eligible for early retirement or who were unvested were wiped out, got nothing at all.

In other words, this shows the inequity when we increase pension benefits and we allow those benefits to go into effect immediately in determining the priority in the distribution of assets to the retired and those eligible for early retirement. We can just by one simple amendment to the plan wipe out the rights of those who do not fall in the higher classification of priority. In this bill we are providing a schedule of priorities for distribution of assets on termination.

We say you must go back to the benefits in effect 5 years prior to termination to make that distribution of assets, so that a recent plan improvement will not work to the detriment of the employees. These provisions, if they had been the law at the time of the Studebaker plan termination, would have made sure that many, many people would have gotten at least a good portion of their pension.

One of the problems in Studebaker case was that the employee organization, the union, continued to negotiate plan improvements, larger pensions, knowing the company was in difficulty. When the company folded, only a few got the higher pensions, and they got everything they were entitled to. Those who were not high in the list of priorities were wiped out.

This, I submit to the Members, was the fault not only of the company, but it was the fault of the employee union as well that they did not look out for the rights of all of the employees. What they did was to see that some got much more than they should have at the expense of other employees.

Mr. GAYDOS. Mr. Chairman, will my colleague, the gentleman from Illinois, yield further?

Mr. ERLENBORN. I yield to the gentleman from Pennsylvania.

Mr. GAYDOS. I thank the gentleman for yielding.

Let me try another question. Is the gentleman saying that should we exclude from the provisions of this legislation any type of reinsurance, that the funding and vesting as projected in the language of this legislation would take care of my steelworker after this legislation is passed. Particularly, if any economic condition forces him to leave? Is that not the problem?

Mr. ERLENBORN. I would tell the gentleman that it would take some time for the funding standards to protect them, but the schedule of priorities of distribution of assets on termination would take effect immediately, so there would be some help. I would further answer the gentleman in this fashion: I do not think it is practical to expect that this House will reject termination insurance. I know the pressures that have been put on by the Steelworkers and the United Auto Workers, and I know that even though other elements of organized labor do not favor termination insurance, there is sufficient pressure, sufficient lobbying that has taken place, to guarantee, in my opinion, that there probably will be termination insurance in this bill when it passes. What I am going to offer is not to strike termination insurance from the bill, so the gentleman need not worry about making that point.

What I am going to offer is to see that the termination insurance that is in this bill will be more workable than it is at the present time.

One of the difficulties is that there is an optional account in the termination insurance as proposed by the gentleman from Pennsylvania (Mr. Dent) in the bill. The optional account would allow the employers, upon the payment of a higher premium, to escape employer liability totally.

In my opinion, if we do have this type of optional account, those employers who are anticipating terminating their plans will pay the higher premium and then will dump all of their liability on the insurance corporation, free and clear of any rights of the employees to look to the employer. I think that would be unfortunate.

What I will propose is a modified employer liability that would see that the employer in that optional account could not do this and then turn around the next day and start another pension plan. In the bill before us today, the employer could dump his liabilities, terminating the plan, have the insurance corporation pick up those liabilities, and then turn around the very next day and start a new pension plan. How fair is that to the other employers who, through their insurance payments, are picking up the liabilities of this employer who has dumped? How fair is that to the employees who are the beneficiaries of the other plans, who are going to have their pensions reduced because the employer is forced to pay insurance premiums into a pension trust that

has picked up the obligations of an employer who is so unscrupulous as to dump his obligations on the insurance company? I think we can improve this insurance to have modified employer liability that will not interfere with the employers' ability to get financing to keep their businesses going in hard times, and it will prohibit this employer from dumping his liabilities and then starting another pension plan right away.

The package of amendments that I intend to offer when we reach part 4 of title I will accomplish that, as well as taking investment decisions out of the political arena. I would hope that the gentleman would support that package of amendments.

Mr. GAYDOS. Will my friend, the gentleman from Illinois, yield further?

Mr. ERLENRORN. I yield to the the gentleman from Pennsylvania.

Mr. GAYLDOS. Unless my memory fails me, I think that I had begun my questions, to which the gentleman has so kindly responded, based upon his observations that he wished there were no insurance provisions. If the gentleman has changed, as he has so concisely stated, I agree with him. We agree it is necessary to have reinsurance in the bill and it should be there.

Mr. ERLENBORN. I would repeat to the gentleman I do not think it is necessary but I think, as I said, very practically it is going to be in the bill, the pressures are there, and if it is going to be in the bill let us see that it is drawn in a way that will not allow unscrupulous employers to dump their liabilities on other employers and employees who are participants in the insurance trust.

Mr. GAYDOS. Mr. Chairman, will the gentleman yield further?

Mr. ERLENBORN. I am sorry, I do not feel I can yield further to the gentleman because if I use up all the time Members on this side of the aisle will not be able to join in the debate.

Mr. Chairman, I reserve the balance of my time.

Mr. DENT. Mr. Chairman, I yield to the gentleman from New York (Mr. Biaggi) such time as he may consume.

Mr. BIAGGI. Mr. Chairman, I thank the chairman of the committee for yielding.

Mr. Chairman, I rise in support of this bill. I am privileged to be associated with the gentleman from Pennsylvania, the chairman of the subcommittee (Mr. Dent), who is without parallel in his advocacy of the workingman's plight. He has over the past 5 years during my time in the Congress been the spearhead of this activity and he has managed to overcome all the obstacles to the point where we see fruition or almost fruition on this day.

Also I congratulate the gentleman from Oregon (Mr. Ullman), of the Ways and Means Committee, my colleague who has worked so compatibly with the gentleman from Pennsylvania (Mr. Dent).

I would also like to observe that my colleague, the gentleman from Illinois (Mr. Erlenborn), makes his position very clear for the most part said he agrees with the committee.

But I am a little perplexed. We have come a long way in this endeavor. We are talking about the working man, the man who like so many of us looks forward to a little more security with pension systems, and who works and who has hopes to retire one day, like all of

us, being free and clear of financial problems, and then one day the bad news comes. He is no longer in business. He is unemployed. The firm with which he has given so much of his life is no longer in existence.

My friend and colleague, the gentleman from Illinois (Mr. Erlenborn), says it is not a horror, it is a problem. Well, perhaps, the gentleman comes from an area where the people are more affluent, but in my district I have listened to my people who have been subjected to this type of treatment. I have known many of them for years. They were straight standing and bright and proud of their achievements and contributions. That is they were until the bad news came. Then I saw the husband and wife who were long in years come to my office and seek assistance in this very tragic illustration of injustice. They were no longer straight standing and bright. They were crest-fallen and burdened with a sense of insecurity that logically follows as a consequence of such drastic action.

I have often talked with them. I was frustrated because I recognized the desperation of their plight and the justice of their complaint, but I also knew there was no recourse and I said: "We are working on it in Congress and hopefully one day we will provide resolution."

That day has come. That day is here. Resolution can be provided whether we talk of it in terms of problem or horror. That is of no moment or consequence. To be academic it is a problem. To be realistic and personal it is a horror.

It is a mark of the end of living for many. It is the mark of a new course of life that is burdened every day with a sense of fear and insecurity that comes in advanced years, of uncertain futures, uncertain income, where industries disappear from our economic sphere, where opportunities no longer exist.

So we have dealt with this problem. The chairman has been with it as a matter of principle all of his adult life.

I guess most of us were. I was exposed to the privilege of joining in the legislative process as a member of that subcommittee and a cosponsor of the bill. I am grateful to be here and say that one day we helped produce what in my judgment is the Magna Carta of pensions to the working people of our country. If it is nothing but a single first step, an imperfect first step, it is a very significant first step.

I would be happy to vote for this bill. I regret that it does not contain within it the element I wanted incorporated in it. Hopefully, one day we will perhaps with more experience; but as far as the absence of termination in which my colleague, the gentleman from Illinois (Mr. Erlenborn) said that a survey indicates only a small amount, a small number of people would be affected, if it would be one it is wrong. I know it is more than one.

I suggest that it runs in the numbers of thousands and tens of thousands, the potential even being greater, because we have witnessed in the last decade a new phenomenon in the business world, the advent of the conglomerate, that went about just sucking the very guts out of local industry and in the process wreaking havoc on the working man. Unless that is stayed, or conversely, unless we are provided with the protection that we have been provided in this bill, the working man continues to be exposed to pressures.

Title I establishes the baseline requirement for fair handling of a worker's money, a must if pensions are to be fair and honest, the rules on disclosure of all information relating to pension funds are very, very strict. This is the only way abuse can be detected and corrected. Without information there is no protection. In this bill we are making sure there is going to be access to all relevant information.

Second, equally important, are the rules on fiduciary responsibility. We are all familiar with the colloquial phrase "guard as if it were your own." Too often where pension funds are concerned, that statement is not lived up to. The men in charge do not—and have not—guarded other people's money as if it were their own. That is intolerable and we must put an end to it. There is only one sure solution to this and we have taken it: require personal liability on the part of all those who deal with pension funds; in effect, require the money managers to treat the fund as if it were their own money. This section alone goes a long distance toward securing the basic rights of the worker to a secure pension.

The next section, vesting, is critically important to the concept of fairness. A pension plan is not fair if, given the conditions of the modern marketplace, an individual's rights to a pension never vest. For it is wrong to make a worker choose between a job offer and his pension, as is now the case. It is immoral to require a worker to forfeit 25 years of pension contributions and benefits if he exercises his God-given right to take another job just a few years before his retirement. He is sacrificing what is his—his contributions—and what he and his family need—his retirement fund. That is unrealistic, unfair, intolerable and wrong in today's society.

The answer to this injustice is vesting. Once his rights in the pension fund are vested, the worker retains his share arising from the period he worked for the employer, regardless of where he works later on in his career. The worker need never again sacrifice his pension to take a better job.

But for vesting to work well, it must occur early in the employment period. If this requirement is not included, a worker could spend 19 years on the job only to find the gross injustice that, when leaving it, he has no rights to a pension because they do not arise—his rights do not vest—unless he has been on the job for 20 years. To remedy this wrong, we have set vesting relatively soon after the worker comes onto the company's payroll.

But we are conscious of the variety of pension plans and of the importance of private sector decisions on this important matter. Thus, we have left it to the company offering a plan to choose one of three different vesting procedures: Graduated vesting beginning with at least 25 percent after 5 years, reaching 100 percent after 15 years, or simple 100 percent after 10 years, or, finally, 50 percent when years of service and age of employee total 45, 10 percent per year over the succeeding 5 years. Behind all of these provisions stands the just and necessary rule that all persons serving in a company with a pension plan must be covered if they have worked with the company for at least 1 year and are at least 25 years of age.

The next critical feature of pension reform and our effort to secure justice for the American worker is the funding section. There is no security to a pension plan if it is not funded properly. Improper fund-

ing, whether arising through inexcusable ignorance or outright fraud, leads to bankruptcy. We cannot permit that if the worker is to be sure of his pension. The subcommittee of which I was a member conducted careful and thorough surveys of various funding procedures which would guarantee solvency. We reached the conclusion there is no financial security to a plan which does not fund normal costs currently, and we have so required in the bill.

Existing past service costs we found could safely be amortized over a 40-year period, and unfunded costs arising in the future could be amortized over 30 years with a slightly longer period for multi-employer plans. I am confident these provisions will insure pension solvency and protect the worker.

All that we have required, however, is meaningless—is a fraud—without part 4 of title I, the all important termination insurance provision. This is a particularly controversial section, but it must be adopted if our promise of reform is to be anything more than an empty illusion.

The requirements for funding, vesting, fiduciary responsibility, and disclosure go a long distance toward making plans safe, fair, and secure. There remains, however, the risk that the employer company will go out of business, be bought up or merged with another firm. When a company effectively goes out of business all of its assets and commitments go into the general fund of bankruptcy and are lost to the worker. He receives no pension payments. He is cheated out of not only what his company promised him, but out of his own contributions toward his retirement. The incompetence of a business would result in a virtual theft of his own, hard earned money. This represents the ultimate nightmare for the retired pensioner, primarily dependent on his retirement income and now plunged into poverty. It is heartbreaking for the worker looking forward to his retirement pension, for which he has struggled all his working life. Just last month, the Rheingold Beer Co. in New York City went bankrupt, and workers of 25 and 30 years employment with the company are now in danger of losing their pensions and facing just such a nightmare.

The termination insurance program will stop this scandal. Its operation is simple. A company is required to pay insurance premiums on its unfunded liabilities to an insurance program administered by the Secretary of Labor. If the company becomes insolvent, the insurance program pays the worker his pension under any and all circumstances. This guarantee means that never again will the worker lose what is his by right, and never again will the pensioner be thrown into poverty. It goes a long way toward making retirement the truly safe haven it should be for those who have worked hard all of their lives.

The termination insurance program is thus the critical section of the bill. If we fail to enact it, we are merely improving the operation of pension plans, not insuring the delivery of moneys. This would make pension reform a heartbreaking fraud on the American worker.

Title II of the bill represents the Ways and Means Committee contribution toward pension reform. The most important provisions of this title relate to the contributions employees may make to their pension plans above the required minimum and the granting of tax deductions for allowable amounts. This is especially important in the

so-called Keogh plan self-employment situation, the tax qualified plans which are generally regulated by title II, and for individuals not covered by other plans. I believe title II represents a valuable and significant contribution to the overall structure of pension reform as laid out in title I.

In sum, Mr. Chairman, we cannot delay any longer. We must pass this bill now. I urge quick passage of the Employee Benefit Security Act of 1974.

Mr. BIAGGI. Mr. Chairman, I have two questions I would like to pose to the chairman, for the record, and I would appreciate his response.

Section 411(a)(1)(E) of section 1012 states that a multiemployer pension plan may suspend payment of benefits whenever a participant resumes employment in the industry. For purposes of clarification, it is appropriate to define the maritime industry generally as that sector presently under the jurisdiction of the Merchant Marine Subcommittee of the House Merchant Marine and Fisheries Committee, namely, commercial exploratory service and mining vessels operating on the high seas, inland waterways, Great Lakes, coastal zones, harbors, and noncontiguous areas, or serving offshore ports, platforms or other sites.

Mr. DENT. Well, in my opinion it is appropriate and has that designation.

Mr. BIAGGI. I have another question, Mr. Chairman. Under section 105(b)(3) of title I, the plan is required to furnish certain information to plan participants and beneficiaries each year. In the maritime industry many seafarers maintain no permanent address. In fact, frequently the union headquarters or the union hall in port cities is the address used by seafarers. In addition those seafarers having a permanent address are frequently at sea for extended periods of time. Many do not return to home port or to a permanent residence for months and sometimes for more than a year. For many years the Seafarers International Union has published full information on the pension plan covering its members in the Seafarers Log. The Seafarers Log is sent to each seafarer's last furnished address. In addition, multiple copies of this newspaper are available at all times in each union hall and are also placed aboard every vessel on which members of the SIU are employed. The Seafarers Log is published every month. If all of the information required by the act is printed at least once a year in the Seafarers Log, would this constitute compliance with the requirements of section 105(b)(3)?

Mr. DENT. I expect it would be proper for the Secretary of Labor to issue regulations along that line, because as I understand it now, the same conditions prevail in the reporting that has to be done at the moment. I am sure that the Secretary will issue a regulation along that line, if he has not yet.

Mr. BIAGGI. I thank the chairman.

(Mr. Biaggi asked and was given permission to revise and extend his remarks.)

Mr. ERLENBORN. Mr. Chairman, I yield 5 minutes to the gentleman from Illinois (Mr. Young).

(Mr. Young of Illinois asked and was given permission to revise and extend his remarks.)

Mr. Young of Illinois. Mr. Chairman, I would like to review two or three features of this proposed legislation. I think that the present legislation like most legislation, has some forward looking improvements, but it also has some handicaps and defects also encompassed in this proposed legislation and I would like to join with the remarks of my colleague from Illinois (Mr. Erlenborn) with respect to certain of the criticisms of this legislation which I think need to be emphasized.

First off the purpose of this legislation is to improve the protection of the employees who are to benefit by these types of deferred compensation programs, and in particular the benefits of the pension, or the defined benefit type of plan, as that term is used in this legislation.

The defined benefit plans, under this legislation, have specific provisions with respect to funding and with respect to participation and vesting.

By adopting the rules of law in this legislation and applying them across the board to both the defined benefit plan, and also to the defined contribution plan, some companies with which I am familiar will not be able to afford both plans, and in such cases, we will be creating a detriment to the employees of such companies. Why? The reason is that this legislation requires both types of plans, defined benefit plan and defined contribution plan, to meet these minimum requirements with respect to funding and vesting and participation. As a result, the additional cost of amending these plans to meet such criteria, may well cause that company or some of such companies to reduce the benefits in one of their two plans in order to be able to afford to keep both plans in effect, or they may have to eliminate one of the plans.

So, I think we might have drafted better legislation. We might have improved this legislation if we had provided that the three items I have referred to, participation, vesting and funding, where a company has two plans in effect, that if the pension plan meets the requirements of participation vesting and funding, then the profit-sharing plan would not have to meet the same strict requirements. That is one point I want to emphasize.

The second point I want to make is, as my colleague from Illinois (Mr. Erlenborn) has very clearly pointed out, that the net effect of this legislation may well be that many employers will decide to discontinue their pension plans and go to a profit-sharing plan, because the insurance termination provisions of this legislation are going to require them to make contributions. Such contributions will be deducted from the amounts of moneys which would otherwise go into the retirement plan. As a result it is either going to cost employers more money or it will serve to reduce the amount the employees would otherwise get. Many employers are going to say, "I think the thing we must do is discontinue this pension plan," particularly in view of the fact that the employers are now being saddled with the higher cost of social security which is now becoming a very major factor in the compensation plans of most companies around the United States.

Therefore, I think that just as has been so well stated by Congressman Erlenborn, the net effect of this legislation may well be to discourage not only the existing pension plans from continuing, but also to discourage the formation of new pension plans. The effect will be that we will have more profit-sharing plans which avoid the require-

ments of pension plans that have to be met with respect to funding and with respect to the insurance termination provisions that apply to the fixed benefit type of plans.

Therefore, I join with my colleague from Illinois in saying that I wish we could eliminate the insurance provisions from this bill, at least for a year or 2 years, to study the effects of this legislation on the existing plans.

We could then see if this type of legislation unduly discriminates against the pension types of plan in such a manner that it will discourage the continuation of those plans or discourage the future creation of such types of plans.

Mr. ERLENBORN. Mr. Chairman, I yield such time as he may consume to the gentleman from Illinois (Mr. Railsback).

(Mr. Railsback asked and was given permission to revise and extend his remarks.)

Mr. RAILSBACK. Mr. Chairman, I wish to commend the two committees that worked so hard in bringing out a pension reform bill. I have had a great deal of concern expressed by people in my particular congressional district, many of whom are members of the United Auto Workers, particularly—it is the Farm Implement Workers really.

I know that this has been a very laborious task.

Mr. Chairman, I wish to commend particularly my friend, the gentleman from Illinois (Mr. Erlenborn) who, I think, has done an outstanding job.

Mr. Chairman, today is indeed a historic occasion. Finally, we have pension reform legislation on the floor of the House. I was beginning to wonder if we were ever going to see this day. Back in the 92d Congress, I introduced several bills to strengthen and improve the private pension system. Unfortunately, no action was taken by the House on any pension reform measure by that Congress. Therefore, early last year, I again reintroduced my bills.

H.R. 932 would have established standards of conduct that pension plan fiduciaries would have been required to adhere to in order to protect the rights of pension plan participants and beneficiaries. This measure would have also called for improved reporting and disclosure of pension plan operations, terms, and conditions. Another bill I sponsored, H.R. 934, would have permitted individuals to set aside certain amounts of income for their own personal retirement savings, while at the same time enabling them to receive a tax deduction for their savings, similar to that already available to self-employed under Keogh plans. Individuals would have received tax incentives, for the first time, for their own retirement savings when their employer or their union did not already have a pension plan, or in instances where the individuals wished to provide additional retirement benefits because the plan under which they were covered did not provide sufficient benefits. My third proposal, H.R. 935, would have called for minimum standards of vesting and funding, established a pension plan reinsurance program, and provided for a study on portability.

I am most heartened to see that the legislation before us today embodies the substance of my proposals and what I have been advocating over the last few years. Hopefully, we are finally coming to grips with the serious and pressing problems facing far too many Americans today concerning their pension and profit-sharing plans.

However, I would like to mention one aspect of our private pension system which desperately needs improving.

Mr. Chairman, you may recall that when termination insurance was being considered by the committees last Congress, the charge was made that we did not have enough data to shape effective legislation. Because of the lack of sound data, the President directed the Secretaries of the Treasury and Labor to undertake a joint study and report back to him.

That study was made and revealed that a program of pension plan termination insurance is indeed needed. Some opponents state that the 19,400 workers who lost $48.7 million of pension benefits according to the 1972 study represented only about eight one-hundredths of 1 percent of all workers covered by private pension plans. Granted; eight one-hundredths of 1 percent sounds like a small number. However, I hasten to add that the 19,400 workers and the $48.7 million in pension benefit losses are by no means insignificant considerations.

The chance of a worker losing his pension goes on year after year. The Treasury-Labor Department termination study recognizes this, and includes an estimate of the projected risk of loss over a 30-year period. The chance of having your pension terminate during the 30-year period is 1 in 41—or 2.4 percent. That is hardly insignificant.

Mr. Chairman, by passing legislation here today calling for minimum standards of vesting we will in fact be calling for a "bigger" promise under many pension plans. We will unfortunately also be contributing to the present "pension illusion" if we fail to write a termination insurance program into this legislative package. Any pension reform legislation which fails to address itself to the problems of termination is at best unresponsive to the overriding concerns of workers for the safety of their pensions.

We must now usher in a new era of pension reform.

Mr. Erlenborn. Mr. Chairman, I yield 2 minutes to the gentleman from Pennsylvania (Mr. Goodling).

[Mr. Goodling addressed the Committee. His remarks will appear hereafter in the Extension of Remarks.]

Mr. Dent. Mr. Chairman, I yield such time as he may consume to the gentleman from Pennsylvania (Mr. Gaydos).

Mr. Gaydos. Mr. Chairman, I wish to ask the chairman of the subcommitte a few questions in order to make legislative history.

Mr. Dent. I would be very happy to answer the questions.

Mr. Gaydos. I would like to make sure of the vesting requirements under the substitute 12906. Allow me to ask about the application of the requirements to a specific plan.

An existing plan provides, upon retirement at age 62 or later, a benefit equal for each year of service to 2½ percent of the employee's final average, defined as his average compensation in his best 5 consecutive years. The plan pays a maximum of 50 percent of final average pay. The plan now provides that an employee who has completed 20 years of service is to be vested in the full benefit—50 percent of final average pay—payable at age 62.

The bill would, of course, require this plan to extend the right to vested benefits to employees who terminate before 62 and with less than 20 years of service. Let us assume that this plan elects to provide 100 percent vesting after 10 years of service.

Is it correct that this plan could be amended, after enactment of the law, but before the vesting provision becomes effective, to identify age 65 as its normal retirement age for payment of benefits to participants who terminate before 62 if they have completed 10 to 19 years of service?

Mr. DENT. Yes.

Mr. GAYDOS. Is it clear that this plan could establish 65 as its normal retirement age even though it would continue to pay unreduced benefits to participants who terminate at 62?

Mr. DENT. Yes.

Mr. GAYDOS. Now assume that this plan decides to use the 3 percent formula in section 205(a), paragraph 1 and in the newly proposed section 411(b)(1)(A) of the Internal Revenue Code. Is it correct that the rate of accrual for vested benefits could be fixed by the plan at 3 percent, for each year of service, of the maximum benefit of 50 percent of final average pay?

Mr. DENT. Yes.

Mr. GAYDOS. Now, if we apply 3 percent to the maximum benefit of 50 percent, we get an annual rate of accrual of 1½ percent. Is my understanding correct that this plan could fulfill the vesting requirements of the bill by providing any participant whose employment terminates before age 62 after 10 to 19 years of service with a pension payable from age 65 equal to 1½ percent of his final average pay for each year of his credited service?

Mr. DENT. Yes.

Mr. GAYDOS. That would mean, then, that the vested deferred benefit for a terminated participant with 10 years of service would be 10 times 1½ percent or 15 percent of pay, starting at 65. Is my understanding correct?

Mr. DENT. Yes.

Mr. GAYDOS. And the vested deferred benefit for a terminated participant with 19 years of service would be 19 times 1½ percent or 28½ percent of his final average compensation payable from age 65?

Mr. DENT. Yes.

Mr. GAYDOS. This is true, I gather, even though the plan could continue to pay the full maximum benefit of 50 percent starting at age 62 to any participant whose employment terminated after 20 years of service?

Mr. DENT. Yes.

Mr. GAYDOS. In the face of these vesting provisions, it could continue to provide 2½ percent of final average pay per year of service to any participant who terminated at 62, could it not?

Mr. DENT. Yes.

Mr. GAYDOS. Of course, there is nothing in the bill to prevent the employer from providing a greater deferred vested benefit than the 3-percent formula requires; is that correct?

Mr. DENT. Yes; the bill establishes minimum requirements for vesting. Plans can, of course, accrue benefits at a faster rate and can vest their employees in those benefits sooner than would be required under the bill.

Mr. GAYDOS. Will the gentleman yield further to me?

Mr. DENT. I will.

Mr. GAYDOS. I want to thank my chairman.

Following the discussion I had with my colleague from Illinois (Mr. Erlenborn) whom I most emphatically commend for his concise approach and explanation to the legislation generally, except in a specific area where we disagree, I would like to make these observations in order to clarify my position on the general discussion that we had.

It seems to me while the vesting and funding provisions that my colleague from Illinois (Mr. Erlenborn) referred to and which are required by this present legislation, should go a long way toward minimizing the probability of loss from future plan terminations, still in all, as long as a plan contains unfunded accrued liabilities—and a lot of them do—there is always that distinct possibility and even probability, particularly taking into consideration the present economic climate, that the termination of a plan with such unfunded liabilities will result in a loss of vested benefits to participants and beneficiaries of the plan.

As a matter of record and for the purposes of explanation, I would like to make reference to a recent study of pension plan terminations for the year 1972 prepared by the Departments of Labor and Treasury. Their findings disclose the following: First, there were 1,227 plans terminated involving 42,000 claimants; second, 19,500 claimants in 546 plans lost benefits; third, 8.500 of the claimants with losses were either retired or eligible for retirement or fully vested; and fourth, the total present value of these losses amount to $48.7 million for all claimants and $34.4 million for those eligible for retirement or whose rights were fully vested.

Mr. Erlenborn. Will the gentleman yield?

Mr. Gaydos. I will in just 1 minute.

Half of these losses were participants in plans of unprofitable employers. I do concede that this is minuscule in a way when we consider any relation to the overall participants in pension plans, but I do make the point in good conscience and urge my colleagues to accept the position that under the circumstances we have experienced, as indicated in the numerous hearings we had, if even one employee loses a benefit under these circumstances, regardless of the statistics, still to him it is a fiasco and an important item.

Mr. Erlenborn. Will the gentleman yield?

Mr. Gaydos. I yield to the gentleman.

Mr. Erlenborn. Is the gentleman aware of the fact that under this legislation before the effective date of termination of the insurance those companies that operate pension plans that are not collectively bargained will have the option to terminate their plan before the insurance takes effect? And in this way many hundreds of thousands of employees may be denied private benefit coverage in the future.

Mr. Gaydos. I am not proud of that provision. I wish we could change it. In fact, we had an amendment that was designed to do just that. It is not the best situation, but we are talking about the present legislation generally.

Mr. Erlenborn. Will the gentleman yield further?

Mr. Gaydos. I yield to the gentleman.

Mr. Erlenborn. The gentleman is aware at the present time it is customary when a new plan is begun to give credit for past service of all employees for their service with the company even before the pension plan is begun.

Mr. GAYDOS. If that were not true, you could never start a pension plan. But go ahead. I do not want to interrupt the gentleman.

Mr. ERLENBORN. This then means that the plan starts with large unfunded past-service liabilities, because you have not had an opportunity before starting a plan to get it funded, then you do not have sufficient funding. Is the gentleman aware that the creation of these vast unfunded liabilities combined with insurance that makes it a personal liability of the employer will probably even further discourage the employer from either starting a plan or, if he does start the plan, then not to give past service credits?

Does the gentleman feel that this sort of legislation is really ultimately to the best interest of the working men and women of this country? I personally do not think so. I think we ought to encourage the expansion of the private pension industry, and encourage more employers to give larger pensions, but the introduction of insurance termination will do exactly the opposite, and will hurt hundreds of thousands more working men and women than will ever be affected by the termination that the gentleman from Pennsylvania is opposed to.

Mr. GAYDOS. The gentleman from Illinois is a very difficult man to carry on a colloquy with because, for want of a better descriptive term, the gentleman hogs the time. But let me ask the gentleman from Illinois, is the gentleman or is the gentleman not in support—and I think I understand the position of the gentleman, but I would like to have the gentleman clarify it, I ask again, is the gentleman in support of plan termination insurance?

Mr. ERLENBORN. If the gentleman will yield, I think I made it clear that I do not believe it is workable. I am sorry that it is in the bill, but the provisions can be made more workable. We can take out the political determinations as to investments. We can give organized labor and business a voice in operating this insurance corporation.

No, I would rather we not have insurance, because I will predict, and I think I will be proven correct, that many more people will be adversely affected by the termination insurance than will ever be benefited by it.

Mr. GAYDOS. Mr. Chairman, I want to thank my colleague, the gentleman from Pennsylvania (Mr. Dent), who is the chairman of the subcommittee, for yielding me this time and, further, Mr. Chairman, I do want to congratulate the gentleman from Pennsylvania on his foresight in insisting upon and presently supporting the plan termination aspect of this legislation.

Mr. ERLENBORN. Mr. Chairman, I yield such time as he may consume to the gentleman from Wisconsin (Mr. Thomson).

(Mr. Thomson of Wisconsin asked and was given permission to revise and extend his remarks.)

Mr. THOMSON of Wisconsin. Mr. Chairman, I would ask the distinguished gentleman from Pennsylvania (Mr. Dent) if he would enter into a colloquy with me for the purpose of answering some questions?

Mr. DENT. Mr. Chairman, I will be happy to do that.

Mr. THOMSON of Wisconsin. Mr. Chairman, as I am sure the gentleman from Pennsylvania knows, the State of Wisconsin was one of the first States in the Union requiring pension trust supervision, and we in

Wisconsin are a little bit disturbed about the preemption by the Federal Government of this plan that has worked so successfully for many, many years.

The question is: Will the preemption of State law nullify any pending litigation a State may be involved in concerning violations of State law which occurred prior to the preemption?

Wisconsin, for example, has legal actions pending due to violations of State law. If the cases cannot be brought to court prior to the Federal preemption, will Wisconsin be able to proceed?

Mr. DENT. Mr. Chairman, in reply to the inquiry of the gentleman from Wisconsin (Mr. Thomson) may I say that in my opinion they would be able to proceed with any pending judicial proceeding. So far as I know we have no retroactivity in any such case.

Mr. THOMSON of Wisconsin. Question No. 2: If States now have laws to be preempted by this act, will there be a period between preemption of State law and the effectiveness of the Federal law?

With respect to fiduciary responsibility and disclosure, for example, that portion of the bill becomes effective 6 months after enactment. When is a State law preempted? On the date of enactment or 6 months after enactment?

Mr. DENT. It would be my opinion it would become effective at the same time as the relevant substantive part itself. In other words, 6 months after the passage of the act.

Mr. THOMSON of Wisconsin. Mr. Chairman, I thank the gentleman from Pennsylvania.

Mr. DENT. Mr. Chairman, I have no further requests for time, and yield back the balance of my time.

The CHAIRMAN. The Chair would like to inquire of the gentleman from Pennsylvania (Mr. Dent) whether the gentleman from Pennsylvania intends to yield back all of his remaining time?

Mr. DENT. I do. Mr. Chairman. I yield back the remainder of my time.

The CHAIRMAN. The Chair would like to make the same inquiry of the gentleman from Illinois (Mr. Erlenborn).

Mr. ERLENBORN. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. All time for debate for the Committee on Education and Labor having expired, the Chair will now recognize, under the rule, the gentleman from Oregon (Mr. Ullman) for 1 hour, and the gentleman from Peennsylvania (Mr. Schneebeli) for 1 hour, controlling the time for general debate for the Committee on Ways and Means.

The Chair now recognizes the gentleman from Oregon (Mr. Ullman).

Mr. ULLMAN. Mr. Chairman, I yield myself 10 minutes.

(Mr. Ullman asked and was given permission to revise and extend his remarks.)

Mr. ULLMAN. Mr. Chairman, first I want to commend the committee members and the staff and the chairman of the subcommittee, the gentleman from Pennsylvania (Mr. Dent), and the members of his committee and their staff, for what I consider to be one of the most difficult legislative operations that we have had in Congress for a long time.

The Employee Benefit Security Act of 1974 is one of the most important bills to come before the House in many years. It deals with a basic problem affecting practically every individual in this country—namely, more adequate provision for retirement. It represents landmark legislation whose beneficial effects in protecting the pension rights of individuals and encouraging more adequate provisions for the retirement of all gainfully employed people will be felt for decades to come.

This legislation concerns the legitimate interests and jurisdiction of both the Ways and Means Committee and the Committee on Education and Labor. The Ways and Means Committee, for example, is concerned with pension legislation because over $14 billion of tax deductions were taken for contributions to qualified corporate plans in 1971. For over three decades the tax laws have been used to grant inducements for the growth and development of nondiscriminatory pension plans for the benefit of the rank and file of employees. Under rules laid down in the Internal Revenue Code, employer contributions to such nondiscriminatory plans may be deducted within specified limits, employees defer payment of tax on the employer contributions made on their behalf to such plans until they receive them in the form of benefits, and the earnings of the pension plan itself are exempt from tax. And for over 30 years, the Internal Revenue Service has been administering the vital provisions of the Internal Revenue Code relating to pension plans, examining such questions as coverage, participation, and vesting practices in order to determine whether particular plans are in fact nondiscriminatory and qualify for the special tax treatment.

However, we on the Ways and Means Committee recognize that the Education and Labor Committee also has a legitimate concern in pension legislation, particularly since such subjects as coverage, vesting, and funding practices directly affect the welfare of many millions of employees.

This dual jurisdiction over pension matters has undoubtedly raised some technical problems in bringing this legislation to the floor. But I think that the two committees working together have successfully resolved these technical problems. In fact, it is probable that the dual jurisdiction has resulted in a better bill because it has meant that the joint experience and resources of both the Ways and Means Committee and the Committee on Education and Labor have been brought to bear on the complex issues involved in pension reform. In particular, we on the Ways and Means Committee want to acknowledge the very substantial contribution to this legislation that has been made by Mr. Dent and his fellow members on the Education and Labor Committee.

I might also add that the Ways and Means Committee has worked very hard on this bill and has given it very considerable consideration. We held public hearings on pensions earlier this year and we have met in 38 executive sessions over the period from October 1 of last year and to February of this year to develop the legislation.

The substitute, therefore, represents the combined cooperative efforts of the two committees. Title I was developed by the Education and Labor Committee and title II by the Ways and Means Committee. To a considerable degree, these two titles deal with different matters. Title I, for example, makes provision for plan termination insurance

as well as for new requirements regarding fiduciary responsibility and disclosure, matters which are not dealt with in title II. Similarly, title II contains provisions relating to purely tax matters, such as tax deductions under pension plans, not covered in title I since they are of no direct concern to the Education and Labor Committee. Title I and title II each contain provisions dealing with participation, vesting, and funding—reflecting the concern of each of the two committees in these areas. However, I do not think this will create any problem because the language in the overlap areas in title I and title II is virtually identical and the bill provides for the development of joint regulations by the Treasury Department and the Labor Department in the overlap areas. In addition, it is our intention that these two departments coordinate their efforts to avoid duplicate enforcement.

Before turning to the substantive provisions of the pending legislation, I think it only fair to point out that the private pension system has many important achievements to its credit. Estimates of the coverage of private pension plans range from 23 million to 30 million employees for 1972 and 42 million employees are expected to be covered by 1980 without any change in law. Similarly, in 1970 about $14 billion was contributed to pension plans by employees and employers and 4.7 million beneficiaries received $7.4 billion in pension payments. Moreover, pension plan assets amounted to $150 billion, book value, in 1972 and are expected to reach $225 billion by 1980.

However, despite these achievements, a number of serious problems have arisen in regard to pension plans which require remedial action. Only about one-half of all employees in private nonagricultural employment are covered by pension plans. Many private pension plans give covered employees vested rights to benefits—that is, the right to receive benefits if he leaves or loses his job before retirement age. However, many plans provide inadequate vesting or no vesting at all prior to retirement. The result is that large numbers of employees who are now covered by pension plans may never receive benefits in the absence of remedial action. Although many plans are adequately funded, a significant number of plans are not, raising a serious question as to whether adequate funds will be available to pay benefits to employees when they fall due. Finally, present law discriminates against individuals not covered by pension plans with regard to the tax treatment of retirement savings. It also accords widely disparate pension tax treatment to corporate employees as compared with self-employed individuals that cannot be justified.

In dealing with these problems, title II, or H.R. 12855, continues to rely primarily on the tax laws to secure needed improvements. In general, it retains the tax incentives granted under present law for the purpose of encouraging the establishment of plans which contain socially desirable provisions. However, it improves the effectiveness of these tax incentives by extending the incentives where this is justified and by pruning them where this is indicated to prevent abuses. In addition, the title requires qualified plans to comply with specified standards designed to make such plans a better instrument for providing benefits for employees.

Let me be more specific in describing the provisions of title II of the bill.

Qualified plans are prohibited from requiring overly restrictive coverage standards by providing that generally an employee cannot be excluded from a plan on account of age or service if the employee is at least 25 years old and has had at least 1 year of service. The 1-year service requirement may be extended to 3 years if immediate vesting is provided.

Qualified plans are also required to comply with one of three alternative minimum vesting standards. The first of these provides for at least 25 percent vesting at the end of the fifth year of covered service. Thereafter, the vesting percentage is increased by 5 percent a year until a level of 50 percent is reached at the end of the 10th year. Following this, vesting increases at the rate of 10 percent a year until 100 percent vesting is reached at the end of the 15th year.

The second vesting standard under the bill is 100 percent vesting at the end of 10 years of covered service.

The third vesting standard is the so-called rule of 45. Under this standard, there must be 50 percent vesting when the sum of the age of the individual and the number of years of covered service equal 45—provided there is at least 5 years of service. An additional 10 percent per year is then required to be vested in each of the next 5 years of service.

These vesting rules are phased in over a 5-year period beginning, in the case of existing plans, in 1976.

The title provides three alternative minimum vesting standards because we did not believe that it would be desirable to force all retirement plans into one rigid mold in regard to vesting. These alternative standards have the advantage of providing adequate flexibility to the hundreds of thousands of retirement plans to enable them to provide adequate vesting protection to their covered employees in the light of the individual circumstances and conditions confronting them. Moreover, the additional cost of financing pension plans involved in these minimum vesting requirements is expected to be moderate. Overall, for all plans, these cost increases will range from 0 to 1.5 percent of payroll.

The title also provides minimum funding standards for qualified plans to assure that adequate funds will be available to pay retirement benefits when they fall due. Under the bill, normal costs are to be funded currently. Accrued costs attributable to already existing liabilities are to be amortized over a 40-year period. Liabilities under plan amendments and new plans generally are to be amortized over a 30-year period, except that in the case of multiemployer plans the amortization period is to be 40 years—in this latter case the Secretary of Labor can extend this for a further period of 10 years. Experience gains and losses are to be amortized over 15 years generally. However, for multiemployer plans, experience gains and losses are to be amortized over 20 years and the Secretary of Labor can add an additional 10 years to this 20-year amortization period. These experience gains and losses generally will be required to be recomputed only every 3 years.

The funding standards that I have just described are based on accrued liabilities. However, if funding requirements are higher under a second general standard which is based on accrued "vested" liabilities, this standard is to apply. Under this standard, accrued vested

liabilities are determined, as also are the value of the plan's assets. Where the former exceeds the latter, the contribution for that year must be sufficient to cover the level annual payment requirement to amortize the difference in 20 years. A determination for a new 20-year amortization period is made in each of the succeeding years.

Where any of the requirements set forth above present hardship under a plan, the Secretary of the Treasury can under certain specified conditions permit variances spreading the current liability in this case over a 15-year period.

In addition, the title recognizes the special problems of multiemployer plans by authorizing the Secretary of Labor to authorize exceptions to the vesting and funding standards which I have described where he finds that they seriously endanger the continuation of a plan.

Finally, the title gives existing plans time to comply with the new participation, vesting, and funding standards. Under the title, the new standards generally do not apply until plan years beginning on or after January 1, 1976. In the case of collective bargaining plans, the January 1, 1976, date is to be extended to January 1, 1977, or the expiration date of the current collective bargaining agreement, but not beyond January 1, 1981. For new plans adopted after January 1, 1974, the participation, vesting, and funding provisions are to be effective as of the date of enactment.

Your committee's bill also requires qualified plans to provide annuities to pay benefits in the form of a joint and survivor annuity, giving the surviving spouse an annuity equal to at least 50 percent of the annuity paid during the joint lives, unless the participant elects in writing before the annuity starting date not to take a joint and survivor annuity.

Let me turn now to the provisions in title II which are unrelated to provisions in title I. At present, the tax treatment of different taxpayer groups under pension plans is highly inequitable because widely disparate treatment is given to different groups. The deductible contributions to pension plans on behalf of a self-employed person are limited to a maximum of 10 percent of earned income or $2,500 a year. However, there is no specific limitation on the amount of deductible retirement plan contributions that can be made for corporate employees.

As a practical matter, cost considerations tend to place some limitations on the amount of contributions or benefits that can be provided for highly paid executives under qualified corporate plans since the nondiscrimination provisions of the code generally require that rank and file employees be provided with contributions or benefits which are as large in relation to their salaries. However, under smaller plans, such practical cost considerations do not operate to the same extent in limiting contributions or benefits for highly paid individuals. Perhaps the worst discrimination of all applies to individuals who are not covered by qualified plans and who therefore are required to save for retirement out of taxed income.

Because the present tax treatment in regard to pension plans is so diverse for the different groups of individuals involved, it is not feasible at this time to move to a single and completely uniform system of treatment for all the taxpayers involved. However, title II of the bill makes a giant step toward this goal. In effect, it substantially nar-

rows the present differences in tax treatment under pension plans by liberalizing the tax treatment of those who are now restricted in this regard—namely, the self-employed and individuals not covered by pension plans—and by imposing limitations to prevent undue tax advantages under pension plans for highly paid individuals through provisions for inordinately large contributions or benefits for such individuals.

More specifically, the bill increases the maximum deductible contributions that a self-employed individual is allowed to make on his own behalf to a qualified plan to 15 percent of earned income up to $7,500 a year. At the same time, provision is made to assure that self-employed people who wish to utilize this full maximum tax allowance for their own contributions will also have to provide significant pension contributions for their regular employees who are covered by the pension plan.

Individuals who are not receiving the advantages of current coverage under qualified retirement plans are permitted to take deductions for annual contributions to a new type of individual retirement plan, up to 20 percent of earned income or $1,500, whichever is less. To encourage the widespread use of such individual retirement plans, your committee has provided that the contributions to such plans can be invested in a wide range of investments, including special government retirement bonds which would be issued for this purpose, annuity contracts sold by insurance companies, mutual funds, corporate securities, banks, and credit unions.

This amount cannot be drawn down without penalty before age 59½—except in the case of death or disability—and the individual must begin drawing the amount down by age 70½ if penalty is to be avoided. An individual may establish the account directly himself or, alternatively, an employer or labor union may maintain accounts of this type for employees or members.

Finally, we have placed limits on the amount of contributions or benefits that may be provided for any individual under qualified plans. In taking this action we have not been motivated by the desire to limit retirement benefits as such. Your committee believes that it is generally desirable to encourage large retirement benefits provided that they do not constitute unreasonable compensation. However, I am sure that you will agree with me that there is no reason to subsidize extraordinarily large retirement benefits through the tax system.

For this reason, the bill provides that annual contributions on behalf of any individual under defined contribution plans—profit sharing and money purchase pension plans—cannot exceed 25 percent of his compensation or $25,000, whichever is less.

In the case of defined benefit plans, the pension which may be paid with respect to any individual may not exceed 100 percent of his compensation in his high 3 years of employment or $75,000, whichever is the lesser. Both the $25,000 amount and the $75,000 amount are subject to cost-of-living allowances. A "grandfather clause," provides that if an individual is eligible for more than a $75,000 pension based upon his current compensation by taking into consideration his additional period of employment up to the time of his expected retirement, this amount may be paid despite the $75,000 limitation.

If an employee is under both a defined benefit plan and a defined contribution plan, then an overall limit is applied to coordinate the two limits discussed above. In this case, the sum of: First, the percentage utilization of the maximum limit under the defined benefit plan and; second, the percentage utilization of the maximum limit under the defined contribution plan cannot exceed 140 percent. Amounts in excess of these limits may be provided under the plan, but may not be paid out of a qualified trust.

I would like to add that the Ways and Means Committee worked very hard in developing the limitations on contributions or benefits for individuals that I have just described. We believe that these limitations will not impose hardship for individuals covered by qualified plans such as the Sears, Roebuck plan. This is not to say that you won't hear of some cases where individuals are affected by the limitation.

This is the purpose of the limitations since if they didn't affect anybody there would be no purpose to having them. However, I want to assure you that these limitations permit pensions that are generous, judged from any reasonable standard.

The tax provisions affecting retirement plans when fully effective will result in an estimated net revenue loss of $460 million a year. This figure covers the revenue losses resulting from the liberalized H.R. 10 provisions and the new individual retirement plans offset by increased revenue attributable to the limitations on pension contributions and benefits and other tax provisions. I might add that the equity gain resulting from the fairer tax treatment of individuals in regard to pension plans resulting from the tax provisions in the bill is worth the revenue loss.

This completes my general statement outlining the major provisions of the bill. Because of the importance of these provisions, however, I woud like to insert in the RECORD a more detailed explanation at this point.

I have already said enough to show how essential this bill is and how much it merits your support. Many millions of individuals are counting on us to adopt this vital legislation and we should do so promptly.

GENERAL EXPLANATION OF TITLE II OF THE EMPLOYEE BENEFIT SECURITY ACT OF 1974

One of the most important matters of public policy facing the Nation today is how to assure that individuals who have spent their careers in useful and socially productive work will have adequate incomes to meet their needs when they retire. This legislation is concerned with improving the fairness and effectiveness of qualified retirement plans in their vital role of providing retirement income. In broad outline, the objective is to increase the number of individuals participating in employer-financed plans; to make sure to the greatest extent possible that those who do participate in such plans actually receive benefits and do not lose their benefits as a result of unduly restrictive forfeiture provisions or failure of the pension plan to accumulate and retain sufficient funds to meet its obligations; and to make

the tax laws relating to qualified retirement plans fairer by providing greater equality of treatment under such plans for the different taxpayer groups concerned.

Essentially, the bill represents a significant improvement in the tax treatment now applicable with respect to qualified retirement plans. Your committee regards the present legislation as part of an evolutionary process which keeps this basic framework but which builds on it new provisions which experience indicates are necessary for the proper functioning of these plans.

A fundamental aspect of present law, which the committee bill continues, is reliance on voluntary action by employers and employees under contributory plans for the establishment of qualified retirement plans. The bill also continues the approach in present law of encourageing the establishment of retirement plans which contain socially desirable provisions through the granting of tax inducements. In other words, under the new legislation as under the present law, no one is compelled to establish a retirement plan. However, if a retirement plan is to qualify for the favorable tax treatment, it will be required to comply with specified new requirements which are designed to improve the retirement system. Since the favorable tax treatment is quite substantial, presently involving a revenue loss of $4 billion a year, it is anticipated that plans will have a strong inducement to comply with the new qualification rules and thereby become more effective in fulfilling their objective of providing retirement income.

The tax advantages associated with qualification under the Internal Revenue Code are substantial. Employers, within certain limits, are permitted to deduct contributions made to such plans on behalf of covered employees, whether or not the interests of covered employees are vested; earnings on the plan's assets are exempt from tax; and covered employees defer payment of tax on employer contributions made on their behalf until they actually received the benefits, generally after retirement when their incomes and hence applicable tax rates tend to be lower.

THE ENCOURAGEMENT OF NONDISCRIMINATORY PLANS UNDER PRESENT LAW

As already indicated, our tax laws now provide substantial tax incentives for the establishment of nondiscriminatory retirement plans. In order to qualify as nondiscriminatory, a retirement plan must cover a specified percentage of employees or cover employees under a classification found by the Internal Revenue Service not to discriminate in favor of employees who are officers, shareholders, supervisory employees, or highly compensated employees. Similarly, either the contributions to the plan or the benefits paid out by the plan must not discriminate in favor of officers, and so forth.

In adopting this legislation, your committee is aware of the achievements of the private pension system under the 1942 legislation. The private retirement system has grown rapidly over the past three decades. While the precise coverage of retirement plans is not known, estimates of the number of employees now covered by such plans range from 23 million to 30 million. This compares with coverage of 4 million

in 1940 and 9.8 million in 1950. By 1980, these retirement plans are expected to cover 42 million employees.

The growth which has occurred is also evidenced in other ways. Between 1950 and 1970, total annual contributions made to retirement plans by employees and employers rose from about $2.1 billion to about $14 billion. In 1950, 450,000 beneficiaries received $370 million from retirement plans; in 1970, 4.7 million beneficiaries received $7.4 billion in pension payments. Moreover, retirement plan assets soared from $12.1 billion in 1940 to $150 billion in 1972—book value—and are expected to reach $225 billion by 1980.

PROBLEM AREAS

Despite the substantial achievements of retirement plans, it has become apparent that a number of problems have arisen which prevent many of these plans from achieving their full potential as a source for retirement income. These problem areas are outlined below.

Inadequate coverage.—Despite the rapid growth in retirement plan coverage in recent years to its 1970 level of from 23 to 30 million employees, somewhere in the vicinity of one-half of all employees in private, nonagricultural employment are still not covered by retirement plans. Retirement plans are still relatively rare among small business firms and in agriculture. Moreover, even where employees work for a firm with a retirement plan, the age and service requirements for participation in the plan may be overly restrictive, excluding many employees.

Discrimination against the self-employed and employees not covered by retirement plans.—Another problem area is that present law discriminates against employees no covered by retirement plans and against the self-employed. This is primarily because the personal retirement savings of individuals not covered by pension plans must be made out of after-tax income, while those covered by retirement plans are permitted to defer tax on their employer's retirement contributions. In addition, the earnings on the retirement savings of noncovered persons are subject to tax as earned, while the tax on earnings of pension funds is deferred until paid out as a retirement benefit.

Self-employed people also frequently maintain that they are discriminated against as compared with corporate executives and owner-managers of corporations in regard to the tax treatment of retirement savings. At present, there is no comprehensive limit on the amounts the employer can contribute on behalf of corporate executives and owner-managers of corporations; similarly, there is no statutory limit on the amount of pension benefits that the latter can receive—so long as those contributions or benefits do not discriminate in favor of employees who are shareholders, officers, supervisors, or highly paid and do not constitute unreasonable compensation. As a result of legislation enacted in 1962 and amended in subsequent years, self-employed people can establish retirement plans for themselves and their employees but their deductible contributions to such plans on their own behalf are limited to 10 percent of earned income up to $2,500 a year.

Inadequate vesting: Present law generally does not require a retirement plan to give a covered employee vested rights to benefits—that is,

the right to receive benefits even if he leaves or loses his job before retirement age. Over two-thirds of the private retirement plans provide vested rights to retirement benefits before retirement. However, as a general rule, employees do not acquire vested rights until they have accumulated a fairly long period of service with the firm and/or are relatively mature.

At present, only one of every three employees participating in employer-financed plans has a 50 percent or greater vested right to his accrued retirement benefits. Moreover, 58 percent of covered employees between the ages of 50 and 60 and 54 percent of covered employees 60 years of age and over do not have a qualified vested right to even 50 percent of their accrued retirement benefits. As a result, even employees with substantial periods of service may lose retirement benefits on separation from employment. Extreme cases have been noted in which employees have lost retirement rights at advanced ages as a result of being discharged shortly before they would be eligible to retire. In addition, failure to vest more rapidly is charged with interfering with the mobility of labor, to the detriment of the economy.

Inadequate funding: Another problem area is that a significant portion of present pension plans are not adequately funded—that is they are not accumulating sufficient assets to pay benefits in the future to covered employees. As a result, there is concern that many employees now covered by pension plans may not actually receive pensions when they retire because the funds will not be available to pay for those pensions.

In general, pension plans that are qualified under the Internal Revenue Code must meet certain minimum funding requirements by irrevocably setting aside funds in a trust or through the purchase of insurance contracts. Contributions to such plans must generally be at least large enough to pay the normal pension costs plus the interest on unfunded accrued liabilities which generally are attributable to the past service of the covered employees. However, this minimum funding requirement is not adequate because it is designed only to prevent the unfunded liabilities from growing larger and does not require any payment to reduce the amount of the outstanding unfunded liabilities, which may be substantial.

The available evidence suggests that many pension plans are adequately funded—but that a significant proportion of the plans have not been adequately funded. This is indicated, for example, by a survey made by the Senate Labor Subcommittee of 469 trustees-administered pension plans covering 7.1 million employees. In 1970, about one-third of the plans in the study covering one-third of the participants reported a ratio of assets to total accrued liabilities of 50 percent or less; while 7 percent of the plans covering 8 percent of the participants reported a ratio of assets to accrued liabilities of 25 percent or less.

In general, the older plans are better funded than the newer ones. Over one-half of the plans covered by the study which were 6 years old or less had an assets-liabilities ratio of 50 percent or less, while 35 percent of the plans in existence for 17 years to 21 years had such an assets-liabilities ratio.

Loss of pension benefits due to plan terminations.—Concern has also been expressed over the possible loss of pension benefits as a result of termination on pension plans. The Studebaker case, which has been widely publicized, illustrates how pension benefits can be lost as a result of termination of a plan. When Studebaker closed its South Bend, Ind., plant in 1964, the employees were separated and the pension plan was terminated. The plan provided fairly genererous vested rights and the funding apparently would have been adequate had the firm remained in business and the plan continued in operation. However, at termination, the plan had not yet accumulated sufficient assets to meet all its obligations. As a result, full pension benefits were paid only to employees already retired and to employees age 60 or over with 10 years or more of service. Little or no benefits were paid to large numbers of other employees, many of whom had vested rights.

A joint study of the Treasury Department and the Department of Labor indicates that there were 1,227 plan terminations in 1972. These terminations resulted in the loss of $49 million of benefits—present value—by 19,400 pension participants in 546 of the terminated plans. The average loss of benefits for participants amounted to $2,500. Participants losing benefits represented about eight one-hundredths of 1 percent of workers covered by pension plans. The data, of course, cover terminations occurring over a 1-year period and may not be the typical experience.

Misuse of pension funds and disclosure of pension operations.—There also has been concern about the administration of pension plans. It has been charged that all too frequently pension funds have not been used in the best interest of covered employees. There have been cases of extreme misuse of pension funds.

The Welfare and Pension Plans Disclosure Act, which is administered by the Labor Department, was adopted in 1958 to protect the interests of welfare and pension plan participants and beneficiaries by requiring disclosure of information regarding such plans. This act requires the plan administrators to file with the Secretary of Labor and to send to participants upon written request a description and annual report of the plan. The act was amended in 1962 to make theft, embezzlement, bribery, and kickbacks Federal crimes where these occur in connection with welfare and pension plans. The 1962 amendment also conferred limited investigatory and regulatory powers upon the Secretary of Labor. However, abuses in the administration of pension plans and in the handling of pension funds have continued.

The Internal Revenue Code at present seeks to prevent abuses in the use of funds held under qualified retirement plans by prohibiting qualified trusteed plans from engaging in certain specified prohibited transactions such as lending funds without adequate security and a reasonable rate of interest to the creator of the plan, his family, or corporations controlled by him. Other prohibited transactions include payment of excessive salaries, purchase of property for more than an adequate consideration, sale of property for less than an adequate consideration, or any other transactions which result in a substantial diversion of funds to such individuals. Special additional rules apply to payment of excessive salaries, purchase of property for more than a trust benefiting owner-employees.

OBJECTIVES OF THE MAIN PROVISIONS OF THE BILL

Although there have been significant legislative changes since the present basic framework of the tax laws relating to pensions was first adopted—principally in allowing self-employed people to establish retirement plans for themselves and their employees and in requiring the disclosure of information regarding welfare and pension plans—it has been more than 30 years since these basic pension provisions were first adopted. It is time for new legislation to conform the pension provisions to the present day situation and to provide remedial action for the various problems that have arisen in the retirement plan area during the past three decades.

As indicated above, the present provisions of the Internal Revenue Code provide tax inducements for the adoption of nondiscriminatory plans and to a limited extent other objectives. These nondiscrimination provisions are retained, but the new legislation also requires retirement plans to conform to additional requirements in order to qualify for the favorable tax treatment under the Internal Revenue Code. In taking this action, the committee has been mindful of the need to construct the new requirements so that they will provide meaningful improvement in the various problem areas noted under the present law. At the same time, the committee is aware that under our voluntary pension system, the cost of financing pension plans is an important factor in determining whether any particular retirement plan will be adopted and in determining the benefit levels if a plan is adopted, and that unduly large increases in costs could impede the growth and improvement of the private retirement system. For this reason, in the case of those requirements which add to the cost of financing retirement plans, the committee has sought to adopt provisions which strike a balance between providing meaningful reform and keeping costs within reasonable limits.

Generally, it would appear that the wider or more comprehensive the coverage, vesting, and funding, the more desirable it is from the standpoint of national policy. However, since these plans are voluntary on the part of the employer and both the institution of new pension plans and increases in benefits depend upon employer willingness to establish or expand a plan, it is necessary to take into account additional costs from the standpoint of the employer. If employers respond to more comprehensive coverage, vesting and funding rules by decreasing benefits under existing plans or slowing the rate of formation of new plans, little if anything would be gained from the standpoint of securing broader use of employee pensions and related plans. At the same time, there are advantages in setting minimum standards in these areas both to serve as a guideline for employers in establishing or improving plans and also to prevent the promise of more in the form of pensions or related benefits than eventually is available.

The provisions described below are contained in title II of the bill as developed by the Ways and Means Committee.

Coverage: One of the major objectives of the new legislation is to extend coverage under retirement plans more widely. For this reason, title II of the committee bill sets minimum standards on the age and service requirements which can be used to exclude employees from

participation in plans. Under the new rules, a qualified plan cannot require an employee to serve longer than 1 year or attain an age greater than 25; whichever occurs later; as a condition of eligibility to participate in the plan. Thus, an employee who reaches age 25 and has at least a year of service would be eligible to participate, unless he is excluded for for some reason other than age or service. However, a plan that provides vested rights immediately on participation will be permitted to set the participation requirements at no more than 3 years of service and age 25.

The Ways and Means Committee believes that these rules are reasonable. They provide a balance between the need to grant employees the right to participate in pension plans at a relatively early age so that they can begin to acquire pension rights and the need to avoid the administrative drawbacks that would be involved in granting coverage to immature and transient employees whose benefits would in any event be small. The participation rules also prevent potential avoidance of the vesting rules in the committee bill.

The bill also adopts a number of provisions which are carefully designed to make the minimum age and service requirements for participation work effectively. The Secretary of the Treasury or his delegate is given the authority to determine under regulations what constitutes a year of service for purposes of fulfilling the participation requirement in order to make the service requirement sufficiently flexible to meet the many varying situations which arise in different industries operating under different conditions of employment. At the same time, guidance is provided to those framing the regulations so as to minimize the possibliities of abuse. The bill, for example, provides that a qualified plan may not establish a service requirement for participation which has the practical effect of treating as a year of service an average period for all employees of more than 12 months or which excludes any employee who has more than 17 months of continuous service. In addition, the bill provides that a seasonal employee whose customary employment is for at least 5 months in a 12-month period is generally to be given credit for a year of service if he works his customary season months in a 12-month period.

The Secretary of the Treasury or his delegate is also given authority to prescribe by regulations different rules for determining a "year of service" for those industries whose normal work schedules are substantially different from those that are generally applicable. For example, the regulations could, where consistent with the practice of an industry permit 100 hours of employment to be treated as 1 month, or 1,000 hours of employment to be treated as 1 year.

The bill also provides guidance to the Secretary or his delegate in issuing regulations in regard to the computation of the years of service of an employee who has a break in service. This is of significance since an employee will generally receive greater vested rights if all his periods of service with the employer are combined and treated as one period of service than if each period of service interrupted by a break is treated separately. This matter involves difficult issues. On the one hand, it appears desirable not to require service prior to the break to be merged with service after the break where the break in service is of substantial duration and the period of prior service is relatively short. This is because in such cases, the plan frequently will not have records

regarding the employees' prior service and the administrative difficulties resulting from any requirement to merge service prior to the break with service after the break might make employers reluctant to rehire employees and yet at the same time would not provide substantial benefits for the latter. On the other hand, where the break in service is of relatively moderate duration, treating each period of service as a separate period could give rise to abuses by giving employers an inducement to discharge covered employees and then rehire them after a short time in order to reduce the cost of financing plan benefits. An additional consideration is that where an employee has acquired an attachment to the firm by serving a substantial number of years, and particularly where he has accumulated substantial vested rights to benefits, it seems reasonable that all his service including service prior to the break should be taken into consideration in determining his participation under the plan.

The bill resolves these issues by providing that where an employer rehires an employee who has had a break of service of at least one year after serving with the employer for less than 4 consecutive years, the plan will not be considered to be following an unreasonable procedure merely because it does not take into consideration his prior service. However, where a rehired employee had completed at least 4 consecutive years of service before the break, his prior years of service must be taken into consideration for purposes of computing his years of service unless the break is for 6 years or more. However, if a rehired employee acquired a nonforfeitable right to at least 50 percent of his accrued benefits derived from employer contributions prior to the service break, all his prior service must be taken into consideration in computing his years of service, regardless of the duration of the break.

Under plans which provide defined or specified benefits, it is more expensive for an employer to finance an equivalent retirement benefit for an older employee than for a young employee. To avoid making it more difficult for older workers to find employment, the bill permits plans which provide defined benefits to exclude from participation employees who begin employment within 5 years of the normal retirement age. This, for example, permits a defined benefit plan which provides for a normal retirement age of 65 to exclude an employee who begins work at the age of 60. Such exclusions are not permitted under money purchase pension plans or profit sharing plans. Under these plans, an employee is not promised any specified benefits, but instead is entitled only to the amount that is in his account—employer contributions, forfeitures, and employee contributions, adjustments for earnings, losses, and expenses—with the result that it is no more expensive for the employer to cover older employes than younger employees under such plans.

For the purposes of satisfying the coverage rules of the Internal Revenue Code, a plan is permitted to exclude from participation employees covered by a collective bargaining agreement where the agreement does not provide that such employees are to be included in the plan and there is evidence that retirement benefits were the subject of good faith bargaining. This provision has two objectives: first, it recognizes that employees who are represented in collective bargaining agreements may prefer other forms of compensation, such as cash com-

pensation, to coverage in a plan; and second, it makes it possible for employees who are not covered by a collective bargaining agreement to receive the advantages of coverage in a qualified plan where some employees of the same firm have elected through collective bargaining agreement not to be covered by the plan. At present, it frequently is not feasible for the former employees to receive the advantages of a qualified plan because the very fact that the employees covered by the collective bargaining agreement rejected coverage results in disqualifying the plan on the ground that it does not satisfy the coverage requirements for nondiscrimination. Also in the case of a plan covering airline pilots under a collective bargaining agreement, the bill permits the exclusion of the employees who are not covered by the collective bargaining agreement for purposes of the coverage requirements for nondiscrimination.

Finally, all Government plans, including the Federal civil service pension plan, and plans of church—unless they elect to be subject to the new rules—are exempted from the new participation standards as well as from the minimum vesting and minimum funding standards described below. However, both Government plans and church plans must continue to meet the requirements for qualification under present law in order to make their employees eligible for the tax benefits associated with qualified plans. The committee exempted Government plans from the new higher requirements because adequate information is not now available to permit a full understanding of the impact these new requirements would have on Government plans. For this reason the bills specifically provide that the Committee on Ways and Means and the Committee on Education and Labor are to study the participation, vesting, and funding practices of Government plans, Government plan fiduciary standards, factors affecting the mobility of Government employees and those employed under Federal procurement contracts, and the need for Federal standards in each of these matters. Each committee is to submit to the House of Representatives not later than December 31, 1976, the results of the studies, together with its recommendations.

In order to minimize administrative problems, and insure insofar as possible that plans which satisfy the requirements of the Internal Revenue Code also meet the pension standards which are to be administered by the Labor Department, and vice versa, the bill provides that the Treasury regulations with respect to the participation, vesting, and funding requirements of the bill, other than regulations to enforce the antidiscrimination requirements of the code, are to be effective for plan years beginning after December 31, 1975, only if approved by the Secretary of Labor. Where the bill's provisions apply before that date, as in the case of new plans and plans which elect earlier dates, then the regulations may be prescribed without the necessary approval of the Secretary of Labor. However, these regulations are not to apply beyond the December 31, 1975, plan year cutoff date.

To give existing plans time to adjust to the new age and service participation requirements, the effective date of these requirements is deferred to January 1, 1976, for plans in existence on January 1, 1974. For plans adopted on or after January 1, 1974, the new minimum age and service requirements will be effective in the first plan year beginning after the date of enactment. However, for existing plans which

were the subject of collective bargaining agreements, the new participation standards are not to apply until the later of, first, the expiration date of the last of the present collective bargaining agreements, but not later than January 1, 1981, or second, January 1, 1977.

Vesting.—Coverage under a pension plan does not aid an individual if he later forfeits his right to his pension benefits upon voluntary or involuntary termination of employment. This is an important consideration in view of the fact that ours is a fairly mobile economy where employees tend to change jobs frequently, especially in their younger years. Moreover, the cyclical and technological nature of certain industries results in frequent layoffs over a work career for employees in those industries, as in aerospace and defense. The committee bill deals with this problem by requiring qualified pension plans to grant covered employees reasonable minimum vested rights to their accrued benefits.

The bill helps to assure that covered employees will actually benefit from pension plans by requiring qualified plans, as a condition of qualification under the Internal Revenue Code to meet reasonable minimum vesting standards. Qualified plans are required to grant covered employees nonforfeitable rights with respect to their own contributions. In addition, such plans are required to provide covered employees minimum vested rights with regard to employer contributions after they have fulfilled certain specified requirements. In adopting these minimum vesting requirements, your committee was guided by two broad considerations. The first relates to the need to balance the protection offered by the minimum vesting provision against the additional cost involved in financing the plan. Employees, of course, would be accorded the maximum protection if they were granted immediate and full vested rights to plan benefits. However, it is generally recognized that a requirement for immediate and full vesting would not be feasible because it would involve such substantial additional costs that it would impede the adoption of new plans and the liberalization of existing ones.

The second broad consideration guiding the committee in regard to minimum vesting is the need to provide adequate flexibility to the hundreds of thousands of retirement plans, to enable these plans to provide adequate vesting protection to their covered employees in the light of the individual circumstances and conditions confronting them. In other words, the committee does not believe that it would be desirable to force all retirement plans into one rigid mold so far as vesting is concerned.

In view of these considerations, the bill provides three alternative vesting options:

Under one option, a qualified plan would be required to provide an employee with vested rights to at least 25 percent of his accrued benefits from employer contributions after 5 years of covered service, plus an additional 5 percent for each of the next 5 years and 10 percent for each of the next following 5 years. This means that under this option, at least 50 percent of the employer-provided benefits must be vested after 10 years of covered service and 100-percent vested after 15 years of covered service. This option is designed to enable plans to provide the required vesting on a gradual basis according to years of service, generally without reference to the age of the employee. This option

is neutral with respect to age, since all employees who fulfill the required service requirements are entitled to the specified vesting without regard to their age.

A second option permits firms which wish to provide faster vesting for their more mature employees than for their younger ones to do so by taking into consideration the age of the employee as well as his service for purposes of computing his vested rights. Under this option, the plan is required to provide a covered employee who has at least 5 years of covered service a vested right in at least 50 percent of the accrued benefits financed by the employer's contributions when the sum of his age and years of service equals 45; the minimum required vesting percentage would thereafter be increased by 10 percentage points a year in each of the following 5 years. This would, for example, provide an employee who began work for the employer at the age of 25, a vested right in 50 percent of his accrued benefits financed by employer contributions after 10 years of covered service when he reaches the age of 35. After completing an additional 5 years of service and attaining age 40 he would then be vested in 100 percent of his accrued benefits. On the other hand, an employee who starts to work for the employer at the age of 40 under this option would at the age of 45, upon completion of 5 years of service, receive a 50-percent vested right in his accrued benefits.

The third option provided under the bill permits qualified plans to fulfill the minimum vesting requirements by providing employees a 100-percent nonforfeitable right to accrued benefits derived from employer contributions when they have achieved at least 10 years of service. The committee provided this option because it grants covered employees complete vesting protection after the completion of a reasonably short period of service.

Because the objective is to encourage more adequate provisions for retirement, plans are permitted to defer the payment of the benefits to individuals with vested rights until they reach normal retirement age and are separated from the firm. However, to avoid requiring a plan to carry relatively small amounts of benefits on its books for a long period of time, the bill permits a plan to elect to pay off the employee's vested rights in the form of a lump-sum payment when the employee is separated if the amount of the distribution is less than $1,750. In addition, at the election of the employee, a plan which so provides may make lump-sum payments of any amount to employees at the time they are separated from service in lieu of retirement benefits.

As a general rule, the plan will specify what is normal retirement age for this purpose. However, in order to prevent undue delay in the payment of benefits, payment must begin not later than 60 days after the close of the last plan year in which the participant first, attains age 65, second, reaches the 10th anniversary of the start of his participation, or third, terminates his employment. The "10th anniversary" provision was adopted to encourage the employment of individuals who are hired at mature ages for a long enough period to enable them to earn significant benefits under the plan.

The committee further decided to apply the minimum vesting requirements to benefits accrued prior to the effective date of the provision as well as to benefits accrued after this date on the ground that

employees merit equal protection with regard to plan benefits regardless of when these benefits accrued. This is achieved by generally taking into account the employee's entire service with the employer in determining both his nonforfeitable vesting percentages and the amount of accrued benefits to which these vesting percentages are applied.

To keep the operation of the minimum vesting requirement reasonable and to avoid imposing undue burdens on plans, certain periods of service are permitted to be excluded in determining the employee's nonforfeitable rights. The service which may be excluded is:

First. Service before age 25;

Second. Service during a period for which the employee declined to contribute to a plan requiring employee contribution;

Third. Service during any period for which the employer did not maintain the plan;

Fourth. Seasonal service which does not include a sufficiently long period of time in each 12-month period to be counted as service for purposes of the plan;

Fifth. Certain service broken by periods of suspension of employment; and

Sixth. Service before January 1, 1969, unless the employee has had at least 5 years of service after December 31, 1968. This latter exclusion was adopted to prevent the possibility that plans would otherwise be required to incur extremely large costs for benefits to previously retired employees who would otherwise have the incentive to come back to a firm for relatively short periods of time, primarily in order to obtain plan benefits for their prior service.

How much protection is actually afforded to employees under the minimum vesting provision depends not only on the minimum vesting percentages set forth in the bill but also in the case of defined benefits on the accrued benefits to which these minimum vesting percentages are applied. For this reason, your committee has devoted particular attention to the development of fair and equitable procedures for the computation of accrued benefits.

Under the first option, the accrued benefit is determined by providing that the plan may not allow employees to accrue benefits in any year of service at a rate which is more than 133⅓ percent of the rate of accrual in any other year. However, it is permissible for a plan to provide an accrual rate for any year before the 11th year of service which exceeds 133⅓ percent of the accrual rate after the 10th year of service. The primary purpose of this provision is to prevent attempts to defeat the objectives of the minimum vesting provisions by providing undue "backloading," that is, by providing inordinately low rates of accrual in the employee's early years of service when he is most likely to leave the firm and by concentrating the accrual of benefits in the employee's later years of service when he is most likely to remain with the firm until retirement. Of course, a plan under which employees accrue benefits at a uniform rate would satisfy the requirements of this option. The 133⅓ percent rule also is obviously not intended to place a limit on the amount of benefit increases for future service that may be provided under plan amendments. Moreover, this rule is not to apply to the accrual rate of any plan year after the participant is eligible

to retire with benefits which are not actuarially reduced on account of age or service.

Under a second option, a defined benefit plan may provide for an annual rate of accrual which is not less than 3 percent of the maximum benefit to which the participant would be entitled if he became a participant at the earliest possible entry age under the plan and served continuously until the earlier of age 65 or the retirement age specified under the plan. This treatment provides equal amounts of accrued benefits to employees who are separated prior to retirement age after having worked the same number of years, regardless of their respective ages at the time the service was performed.

Under present law, highly mobile employees such as engineers, frequently do not derive benefits from pension plans even when such plans have liberal vesting provisions because they tend to change jobs before they acquire vested rights in any particular plan. The bill approved by your committee will help such employees to secure actual benefits from pension plans. It provides that where an employer sets up different pension plans for different groups of employees the rate of vesting granted under the different plans need not be the same so long as the combined effect of all the plans is nondiscriminatory. This permits an employer to cover his highly mobile employees in a separate plan which provides faster vesting but lower benefits at normal retirement age than the other plans that he establishes for his other employees.

In addition, the committee bill instructs the Secretary of Labor to conduct a full and complete study of the steps necessary to insure that professional, scientific, and technical personnel and others working in associated occupations employed under Federal procurement, construction or research contracts or grants will, to the extent feasible, be protected against the forefeitures of pension or retirement rights as consequence of job transfers or loss of employment resulting from terminations or modifications of Federal contract grants or procurement policies. The Secretary of Labor is further instructed to report the results of his study to the Congress within 2 years after the date of enactment of the act. Also, if he determines it to be feasible, the Secretary is to develop regulations within 1 year after the date on which he submits his report to the Congress, which will provide for the better protection of the vesting rights of the employees concerned. These regulations are to take effect unless either House of the Congress adopts a resolution disapproving the regulations within 90 days after they are submitted to the Congress.

Under certain circumstances, a plan's vesting rules may cause the prohibited discrimination. Questions have arisen as to whether a plan which satisfies the vesting requirements provided by your committee automatically satisfies the vesting requirements of the nondiscrimination rules. To remove any possible ambiguity on this subject, the committee bill specifically provides that a plan which satifies the minimum vesting requirements provided by this legislation is to be treated as satisfying any requirements regarding the vesting schedule and the rate at which benefits accrue, resulting from the application of the Internal Revenue Code requirements regarding nondiscrimination, unless (a) there has been a pattern of abuse under the plan—such as a

firing of employees before their accrued benefits vest—or (b) there have been, or there is reason to believe there will be an accrual of benefits or forfeitures tending to discriminate in favor of employees who are officers, shareholders, or highly compensated.

The additional costs of financing plans involved when the minimum vesting requirement adopted by your committee becomes fully effective is expected to be moderate. These cost estimates are necessarily based on assumptions as to turnover rates, age distribution, and so forth. However, the range of costs is believed to be broadly indicative of the expected experience of employers generally.

The additional costs will, of course, be zero or smallest for those plans which now have liberal vesting provisions and greatest for those plans which now provide no vesting prior to retirement. This reflects the fact that the minimum vesting provisions will generally bring the costs of the latter plans up to the level of those plans which now have liberal vesting provisions. Overall, for all plans, the cost increases resulting from the new minimum vesting requirements will range from 0 to 1.5 percent of payroll.

In the case of plans adopted after January 1, 1974—which will have been adopted with knowledge of the new requirement—the effective date is the first plan year beginning after the date of enactment. However, for plans in existence on January 1, 1974, to provide time to adjust to the new minimum vesting requirements, the effective date of the minimum vesting standards is plan years beginning after December 31, 1975. For plans which are maintained pursuant to collective bargaining agreements, however, the minimum vesting requirements take effect for plan years beginning after the expiration of the latest agreement or December 31, 1980, whichever is earlier, but in no event before January 1, 1977.

In addition, for all plans in existence on December 31, 1973, the vesting provisions are to become effective gradually over a 5-year transition period Under this rule, 50 percent of the vested rights generally called for under the legislation are to become effective in the first year in which the vesting requirement applies. Thereafter the required vesting is to increase 10 percentage points each year until reaching 100 percent of the vested rights generally required under the legislation after the fifth year.

Finally, the Secretary of Labor is authorized to provide variances from the generally applicable minimum vesting requirements for multi-employer plans whenever he finds that the application of these requirements would increase the cost of the parties to the plan to such an extent that there would be a substantial risk to the voluntary continuation of the plan, or a substantial curtailment of pension levels or the levels of employees' compensation, or impose unreasonable administrative burdens regarding the operation of the plan, and where the application of these requirements would be adverse to the interest of plan participants generally. Under such variances, the Secretary of Labor would prescribe alternative methods by which the multi-employer plan concerned could satisfy the minimum vesting requirements for the period of time that is necessary. These variances from the vesting requirements are not, however, to be prescribed unless all plan participants and other interested persons have received adequate

notice from the plan administrator of any hearing to be held to consider the variance.

Minimum funding standard.—The Ways and Means Committee believes that it is essential for plans to be adequately funded in accordance with a contributions schedule which will produce sufficient funds to meet the obligations of the plan when they fall due. Such an adequate contributions schedule for funding plans not only protects the rights of employees under the plan but also provides an orderly and systematic way for employers to pay their plan costs.

Your committee believes that the minimum funding requirements under present law are inadequate because they do not require any provision to be made to amortize unfunded past service liabilities. Instead they merely require the contributions to the plan to be sufficient to pay normal costs—the costs attributable to the current operation of the plan—and to prevent an increase in unfunded liabilities. To remedy this, your committee has provided new minimum funding standards for qualified plans. In the most typical case, the standard requires contributions to the plan to be sufficient not only to pay normal costs but also to amortize all unfunded past service liabilities in level payments over specified periods of time. A second standard requires contributions to be based on the accrued unfunded vested liabilities of the plan if this results in higher annual payments than the general funding standard. It is anticipated that this second standard will be used for only a small minority of the plans which have relatively large unfunded vested liabilities.

The new funding standards do not apply to the following types of qualified plans:

First. Profit-sharing and stock bonus plans. There is no need for a requirement that contributions be sufficient to fund a specified level of benefits in the case of these plans since they do not specify that participants are to receive any designated amount of benefits, but instead require the paying out of whatever benefits the funds in the plan will purchase on the date the benefits are to begin.

Second. Plans funded exclusively through the purchase of individual insurance contracts which provide for level annual premium payments. These plans are excluded from the funding requirements because they have behind them the funding of the insurance companies involved.

Third. Government plans. However, government plans are still required to meet the present funding standards which require contributions to be sufficient to pay normal pension costs plus the interest on past service liabilities. Also, as noted previously, your committee has provided for a study of Government plans to determine the need for supplying funding standards.

Fourth. Church plans unless these plans elect to be covered by such requirements, and

Fifth. Plans which after the date of enactment of the legislation do not provide for employer contributions.

In the most typical case where the first general funding standard is employed, employers maintaining single-employer plans not in existence on the effective date of the legislation must pay normal costs currently and amortize their past service liabilities in level payments

over no more than 30 years. A similar amortization period of no more than 30 years is required for past service liabilities arising as a result of a single-employer plan amendments after the effective date. However, in recognition of the fact that large numbers of plans assumed heavy past service liabilities prior to any requirement to amortize such liabilities, plans in existance on the effective date of the legislation are allowed a longer period—up to 40 years—to amortize past service liabilities existing at the beginning of the first plan year to which the requirement applies. In addition, multiemployer plans are allowed to amortize all past service liabilities, including those created after the effective date of the legislation, over a period of up to 40 years. This recognizes that multiemployer plans generally have an added element of financial strength in that their contributions come from a number of employers who as a group are less likely than comparable single employers to experience business difficulties.

This funding standard, which will apply to the overwhelming majority of plans, is comprehensive since it requires amortization of all accrued past service liabilities, that is, both vested and nonvested unfunded past service liabilities.

The level payment method of funding adopted by your committee is analogous to the payment of a home mortgage in that each specified payment includes a payment for both interest and principal. It has the advantage of spreading the payments out evenly over the payment period which generally makes it easier for the employer to plan for meeting the payments. Another factor in your committee's decision is that the level payment method, while providing for adequate amortization of past service costs, initially adds only relatively moderate amounts to an employer's existing funding costs. This is because interest on unfunded accrued past service costs, which accounts for the bulk of the payments under the level payment method in the early years, is already required to be contributed to a defined benefit plan under present law.

Provision is also made for the equitable funding of experience deficiences which arise when the actual plan costs turn out to be greater than were previously estimated on the basis of the actuarial assumptions—for example, which the value of the plan assets is less than was expected. In establishing a minimum funding standard for such experience deficiencies, the committee sought to avoid two problems. If it allowed the experience deficiencies to be funded over a very long period of time, an incentive would be provided for the use of actuarial assumptions which understate the costs since any resulting deficiencies could then be made up over a long period of time without penalty. On the other hand, if the experience deficiencies were required to be amortized over too short a period, employers would encounter hardships in meeting the annual payments. This is especially pertinent in view of the fact that most actuarial or experience difficulties are inadvertent.

The bill seeks to avoid both these problems by allowing experience deficiencies to be funded in level amounts over a period of up to 15 years for single employer plans and up to 20 years for multiemployer plans. Symmetrical treatment is provided for experience gains which are attributable to a favorable variation between actual experience and the actuarial assumptions entering into the determination of the employer's cost and contributions.

The determination of experience gains and losses for this purpose will generally be made every 3 years except when the Secretary or his delegate, pursuant to regulations, finds it necessary to require the determination to be made more frequently.

Relief measures are provided to mitigate the impact of the funding requirements in cases where it would otherwise result in hardship. The bill gives the Internal Revenue Service the authority to waive the minimum funding requirement in cases where the application of this requirement would involve substantial business hardship to the employer and would be adverse to the interests of plan participants in the aggregate.

However, the waived contribution must be made up in level payments over a maximum of 15 years. To avoid the indefinite postponement of the fulfillment of the funding standards, the committee bill further provides that not more than five such waivers may be made in any 15-year period.

The Ways and Means Committee also recognizes that multiemployer plans which are negotiated as a result of collective bargaining agreements may involve different considerations in regard to funding those individual employer plans. While it is the objective of the committee's bill to require adequate funding for multiemployer plans as well as for individual employer plans, the committee is aware that a number of multiemployer plans are not as well funded as they might be at the present time and that the application of the new funding standards to such plans without an adequate transition period might cause hardship and be detrimental to the interests of the employees covered by such plans. For this reason, if 10 percent or more of the number of employers contributing to a multiemployer plan demonstrate to the satisfaction of the Secretary of Labor that they would experience substantial business hardships if they were required to amortize past service liabilities and experience deficiencies over the periods of time specified by the bill—40 years and 20 years, respectively—and if this requirement would be adverse to the interests of plan participants in the aggregate, then upon certification by the Secretary of Labor to the Secretary of the Treasury, these plans are to be allowed an additional 10 years to amortize such costs.

In addition, the Secretary of Labor is authorized to provide variances from the minimum funding requirements for multiemployer plans where he finds that the application of these requirements would increase costs to the extent that there would be a substantial risk to the voluntary continuation of the plan, impose unreasonable administrative burdens in regard to the operation of the plan and be adverse to the interests of plan participants in the aggregate. The conditions under which such variances from the funding requirements may be granted are identical to those applying to variances from the minimum vesting requirements described above.

Your committee believes that the generally applicable funding standard, which requires past service liabilities to be amortized in level payments over a specified number of years, will generally provide an equitable and adequate approach to funding the vast majority of plans. However, in some cases where plans have very substantial vested liabilities and relatively small asset values, it appears desirable

to require the unfunded vested liabilities to be amortized more rapidly than under the generally applicable funding standard. For this reason, your committee has provided a second funding standard, based on accrued unfunded vested liabilities. This standard is to appply in lieu of the generally applicable funding standard if it results in a higher annual contribution. Under this standard, the accrued vested liabilities of the plan and the value of its assets are determined. Where the former exceeds the latter, the contribution for that year must be sufficient to cover the first year's payment under a level annual payment schedule required to amortize the difference in 20 years. A new determination with respect to the applicability of this second funding standard is to be made in each of the succeeding years. It is contemplated that this funding standard will be required for only a small minority of qualified plans.

In general, for purposes of funding, the value of the plan's assets is to be determined on the basis of any reasonable actuarial method of valuation which takes fair market value into account under regulations prescribed by the Secretary of the Treasury or his delegate. However, to permit fixed obligations, which frequently are held until maturity, to be given stable values for funding purposes, the plan administrator is given the option of determining the value of a bond or other evidence of indebtedness, which is not in default as to principal or interest, on an amortized basis.

The Ways and Means Committee is aware that the actuarial assumptions made by actuaries in estimating future pension costs are crucial to the application of minimum funding standards for pension plans. This is because in estimating such pension costs, actuaries must necessarily make actuarial assumptions about a number of future events, such as the rate of return on investments—interest—employee future earnings, and employee mortality and turnover. In addition, actuaries must also choose from a number of funding methods to calculate future plan liabilities. As a result, the amount required to fund any given pension plan can vary significantly according to the mix of these actuarial assumptions and methods.

Conceivably an attempt might be made to secure uniform application of the minimum funding standards by authorizing the Secretary of the Treasury or some other authority to establish the specific actuarial assumptions and methods that could be used by pension plans. This would involve, for example, setting a specific rate of interest that could be used by certain pension plans or by specifying certain turnover rates for specified types of firms. However, the committee does not believe that this would be an appropriate procedure, since the proper actuarial assumptions may differ substantially between industries, among firms, geographically, and over time. Further, in estimating plan costs each actuarial assumption may be reasonable over a significant range and it would appear that the proper test would be whether all actuarial assumptions used together are reasonable. These considerations strongly indicate that any attempt to specify actuarial assumptions and funding methods for pension plans would in effect place these plans in a straitjacket so far as estimating costs is concerned, and would be likely to result in cost estimates that are not reasonable.

However, your committee's bill requires the actuarial assumptions of each plan to be certified by an actuary every 3 years, or more frequently if required by the Internal Revenue Service. These certifications will be reported to the Service. Moreover, in order to insure that such certification will be made by competent actuaries, the bill provides that the Secretary of the Treasury is to establish qualifications for actuaries and is to certify for practice before the Internal Revenue Service the persons who meet these standards. In the case of individuals applying for enrollment as actuaries before January 1, 1976, the standards and qualifications set forth by the Secretary shall include a requirement for an appropriate period of responsible actuarial experience or of responsible experience in the administration of pension plans. The Secretary of the Treasury is also to review the actuarial assumptions used by particular plans and an advisory board of actuaries is to be established to assist him in setting up general standards as to reasonableness of assumptions.

The bill also provides new and more effective penalties where employers fail to meet the funding standards. In the past, an attempt has been made to enforce the relatively weak funding standards existing under present law by providing for immediate vesting of the employees' rights, to the extent funded, under plans which do not meet these standards. This procedure, however, has proved to be defective since it does not directly penalize those responsible for the underfunding. For this reason, the bill places the obligation for funding and the penalty for underfunding on the person on whom it belongs—namely, the employer.

This is achieved by imposing an excise tax where the employer fails to meet the funding standards, which starts out at a relatively modest level and increases sharply where there is continued failure to make the indicated contributions. More specifically, if an employer fails to contribute sufficient amounts to meet the new funding requirements, he will be subject to a nondeductible excise tax of 5 percent per year on the amount of the underfunding for any year. If the employer fails to make up the underfunding by 90 days after original notification by the Internal Revenue Service—but with the Service in a position to grant extensions of time—then the employer is subject to a second level excise tax amounting to 100 percent of the underfunding. This determination by the Service is appealable to the tax court and no assessment may be made until after the end of the litigation. Since the employer remains liable for the contributions necessary to meet the funding standards even after the payment of the excise taxes, it is anticipated that few, if any, employers will willfully violate these standards.

For plans adopted after January 1, 1974, which will have been adopted with knowledge of the new requirement, the effective date of the new funding requirements is the first plan year beginning after the date of enactment. For plans in existence on January 1, 1974, which are not maintained pursuant to collective bargaining agreements, the effective date of the minimum funding standards is deferred to plan years beginning after December 31, 1975. And for plans which are maintained pursuant to collective bargaining agreements, the minimum funding requirements take effect for plan years beginning after

the expiration of the latest agreement; if this is after December 31, 1975, or after December 31, 1980, whichever is earlier.

Other provisions to protect covered employees and their beneficiaries—in addition to the minimum participation, vesting and funding standards provided in the bill, your committee has adopted a number of specific provisions to protect the rights of employees and beneficiaries under qualified plans.

Qualified plans that provide annuities must pay benefits in the form of a joint and survivor annuity, giving the surviving spouse an annuity equal to at least 50 percent of the annuity paid during the joint lives, unless the participant elects in writing before the annuity starting date not to take a joint and survivor annuity.

Qualified plans must provide that retirement benefits may not be assigned or alienated, except for voluntary and revocable assignments of not more than 10 percent of the benefits.

Provision is made to prevent mergers or consolidation of plans from reducing the rights of participants. This is achieved by specifying that immediately after the merger each participant would be entitled to receive a benefit equal to or greater than the benefit he would have been entitled to receive immediately before the merger had the plan been terminated.

Protection is given to retired individuals who are separated from the service of the employer against reductions in private plan benefits when social security benefit levels increase. In general, under present integration procedures, social security benefits attributable to employer contributions are treated as though they were part of the private plan. As a result when the level of social security benefits increases, some integrated plans have reduced the amount of the retirement benefits that they provide for covered employees.

Present law under administrative practice provides that qualified plans may not use increases in social security benefit levels to reduce the benefits that they pay where the employees concerned are retired and are already receiving integrated plan benefits. The bill codifies this treatment for retired persons. It also extends the prohibition against reducing plan benefits where social security benefit levels are increased to cases where the individuals concerned are separated from service prior to retirement and have deferred nonforfeitable rights to plan benefits. This provision is effective for increases in social security benefits which take place after the date of enactment or on the date of the first receipt of plan benefits or the date of separation from service—whichever is applicable—if that date is later.

These changes do not affect the ability of plans to use the integration procedures to reduce the benefits that they pay to individuals who are currently covered when social security benefits are liberalized. Your committee, however, believes that such practices raise important issues. On the one hand, the objective of the Congress in increasing social security benefits might be considered to be frustrated to the extent that individuals with low and moderate incomes have their private retirement benefits reduced as a result of the integration procedures. On the other hand, your committee is very much aware that many present plans are fully or partly integrated and that elimination of the integration procedures could substantially increase the cost of financing private plans. Employees as a whole, might be injured rather

than aided if such cost increases resulted in slowing down the rate of growth of private retirement plans.

In view of the serious issues involved in the integration of private plans with the social security system, your committee believes that it is desirable to postpone action on this issue pending further study of this problem. More specifically, your committee plans to consider this overall problem again at the earliest opportunity, possible in connection with future tax reform or social security legislation. However, your committee believes that no further integration of social security and pension benefits should be allowed under any further regulations issued by the Secretary or his delegate at least until June 30, 1975.

Portability.—In view of the fact that ours is a highly mobile economy, characterized by high employee turnover rates, various proposals have been made to establish a system for the portability of vested rights to benefits from one plan to another when an employee changes jobs.

While the complete portability of vested rights to benefits from one pension fund to another is hard to achieve because of the numerous basic differences in private pension plans, your committee's bill contains a number of provisions which will achieve much of the advantage of portability. Under present law, when an employee changes jobs, it is already possible for funds representing his vested rights to benefits under his old employer's plan to be transferred to the retirement plan of his new employer without payment of tax on an optional basis—that is, if the employee and the administrators of the plan involved agree to the transfer. Your committee's bill adds another way in which individuals can transfer their retirement funds on a tax-free basis to a tax-exempt retirement account. It allows them to establish a new type of account called a "rollover account." Under the new arrangement, individuals will have the right to roll over into individual retirement accounts, without payment of current tax, complete distributions of funds financed by employers under qualified plans, H.R. 10 plans, as well as funds from individual retirement accounts, provided that the transfer into the new account is made within 60 days of the withdrawals of the funds from the old plans.

Provision also is made to supply adequate information to plan participants regarding their vested rights to retirement benefits so that they will not neglect to claim these benefits when they become eligible to receive them. In this connection, plan administrators are required to furnish each separated employee who has vested rights an individual statement showing the nature, amount and form of the deferred vested benefit to which he is entitled.

Also, in order to insure that employees will be fully alerted to their retirement benefits, the Social Security Administration will keep records regarding the vested rights of separated employees under single employer plans. Annual information pertaining to such vested rights will be forwarded by plan administrators to the Social Security Administration through the Internal Revenue Service. The Social Security Administration will then furnish this information regarding vested rights to individuals both on request and at the same time that official information is supplied to the employee or his beneficiary regarding social security benefits.

Because the furnishing of such information involves considerably more difficulties for multi-employer plans than for single-employer plans, the bill does not require multi-employer plans to supply individual statements regarding vested rights to separated employees; nor does it require multi-employer plans to file information showing the vested rights of separated employees. However, the Secretary of the Treasury after consultation with the Secretary of Health, Education and Welfare, may prescribe regulations requiring multi-employer plans to submit such information, to the extent it is found feasible.

Plan termination insurance.—Although the Ways and Means Committee regards the development of an adequate program of plan termination insurance as essential to protect the rights of covered employees, title II of the bill, which it developed, makes no provision for such plan termination insurance. This is because provision for plan termination insurance is made in Title I of the bill which was prepared by the Committee on Education and Labor.

Fiduciary requirements.—Title II of the bill makes no change in the rules relating to fiduciaries of qualified retirement plans. As with plan termination insurance, this is not because your committee regards this matter as unimportant but rather because title I of the bill which was prepared by the House Committee on Education and Labor, contains provisions providing for additional rules regarding fiduciary requirements.

Enforcement.—Title II of the bill relies heavily on the tax laws in order to secure compliance with the new requirements that it imposes on pension plans. Plans, for example, are required to comply with the new coverage, vesting, and funding standards in order to qualify for favored tax treatment under the Internal Revenue Code. In addition, excise taxes are imposed for failure to meet the funding standards. As a result, these substantive pension provisions would be administered by the Internal Revenue Service.

The Ways and Means Committee believes that primary reliance on the tax laws represents the best means for enforcing the new improved standards imposed by the bill. Historically, the substantive requirements regarding nondiscrimination, which are designed to insure that pension plans will benefit the rank and file of employees, have been enforced through the tax laws and administered by the Internal Revenue Service. As a result, the Internal Revenue Service is already required to examine the coverage of the retirement plans and their contributions and benefits as well as funding and vesting practices in order to determine that the plans operate so as to conform to these nondiscrimination requirements. Also, the Internal Revenue Service has administered the fiduciary standards embodied in the prohibited transactions provisions since 1954.

Your committee believes that the Internal Revenue Service has generally done an efficient job in administering the pension provisions of the Internal Revenue Code. The very extensive experience that the Service has acquired in its many years of dealing with these related pension matters will undoubtedly be of great assistance to it in administering the new requirements imposed by the committee bill.

However, because the bill increases the administrative job of the Service in this respect, your committee believes that it is desirable to add to its administrative capability for handling pension matters. For

this reason, the committee bill provides for the establishment by the Internal Revenue Service of a separate office headed by an Assistant Commissioner of Internal Revenue to deal primarily with pension plans and other organizations exempt under section 501(a) of the Internal Revenue Code, including religious, charitable, and educational organizations. In order to fund this new office, the bill authorizes appropriations at the rate of $70 million per year for such administrative activities. It is intended that the Internal Revenue Service obtain from all appropriate pension administration sources annual statistical data to indicate the operations of the private retirement system for the purpose of evaluations and public information.

In addition to providing additional opportunities for redress in case of disagreement with the decisions of the Internal Revenue Service on pension matters, both employees and employers will be allowed to appeal determination letters issued by the Internal Revenue Service to the Tax Court after exhausting their remedies under the Internal Revenue Service administrative procedures.

Equalizing tax treatment: in general.—Another objective of the bill is to provide more rational and equitable tax treatment under retirement plans.

The committee believes that there is need on equity grounds to grant individuals who are not covered by any kind of qualified pension plan some of the tax advantages associated with such plans by providing them with a limited tax deduction for their retirement savings.

In addition, there is no justification for the present widely disparate treatment which places no specific limitation on the amount of deductible retirement plan contributions for corporate employees and at the same time limits the deductible contributions to pension plans on behalf of the self-employed to a maximum of 10 percent of earned income or $2,500 a year.

This unjustifiable difference in treatment has resulted in unduly large tax advantages for certain corporate employees: it also discriminates against the self-employed and has had the undesirable result of encouraging large numbers of self-employed people to incorporate merely to secure the larger tax advantages available with respect to corporate retirement plans. This includes large numbers of professional people who are now permitted by all 50 States and the District of Columbia to incorporate.

In view of these considerations, the committee has provided the following three changes which should be regarded as one package in the sense that the adoption of all three changes are needed at the same time in order to improve the tax laws in regard to pension plans.

Equalizing tax treatment; individual retirement plans.—The bill allows individuals who are not receiving the advantages of current coverage under qualified retirement plans to take deductions for annual contributions to a new type of individual retirement plan, up to 20 percent of earned income or $1,500, whichever is less.

These retirement plans will be available to all employees who are not active participants in a qualified retirement plan, in a governmental pension plan or in an annuity plan established by a tax-exempt or public educational institution under section 403(b) of the Internal Revenue Code. Self-employed individuals who are not cov-

ered by qualified retirement plans—H.R. 10 plans—are also eligible to establish individual retirement plans for themselves.

The employer of any individual who establishes a personal retirement plan will be allowed to make tax deductible contributions to that individual retirement account on behalf of the employee which will not be currently taxable to the employee so long as the sum of the employee's own deductible contribution and the employer's contribution do not exceed the allowable 20 percent of compensation—$1,500 annual limit. Unions may also establish individual retirement accounts for their members.

In order to encourage the widespread use of such individual retirement plans, your committee has provided that the contributions to such plans can be invested in a wide range of investments, including special government retirement bonds which would be issued for this purpose, annuity contracts sold by insurance companies, mutual funds, corporate securities, banks and credit unions.

The earnings on the amounts put aside in the individual retirement accounts are to remain free of tax until they are distributed. Distributions from the individual retirement savings plans are to be taxable when received by the employee, generally upon retirement or upon death or disability. However, since the individual's incomes will generally be relatively low when they receive such distributions, the latter will ordinarily be taxed at relatively low rates. Individuals will also enjoy tax savings from being able to defer payment of tax on the earnings of the retirement funds during the time they are retained in the tax-free plans.

Since the objective of the new provision is to encourage adequate provision for retirement needs, withdrawal of the retirement savings prior to age 59½ will result in a penalty tax equal to 10 percent of the amount of the premature distribution. However, early withdrawals are permitted without penalty where the taxpayer becomes disabled. In addition, to prevent the individual retirement savings plans from being used to postpone tax indefinitely, the retirement savings must either be distributed by the time the individual reaches age 70½ or distributed over the lives or life expectancy of the individual and his spouse beginning no later than age 70½.

Your committee anticipates that by encouraging employers to make modest contributions initially for the retirement needs of their employees, such individual retirement plans will lead eventually to the establishment of a significant number of new qualified retirement plans by employers. An employer who believes he cannot afford the entire cost of a retirement plan can start by contributing small amounts for employee individual retirement accounts, can increase his contributions over the years—if it does not exceed the 20 percent-$1,500 annual limits per participant—and then can subsequently convert to an employer-financed qualified plan. The provisions allowing individuals to deduct contributions within the specified limits to individual retirement plans generally take effect for taxable years beginning after December 31, 1973.

Equalizing tax treatment; increasing deductions for H.R. 10 plans.—Your committee's bill grants self-employed people tax treatment with respect to retirement plans—H.R. 10 plans—which is more nearly comparable to that now accorded to corporate employees under

qualified retirement plans. This is achieved by increasing the maximum deductible contributions a self-employed individual is allowed to make on his own behalf to a qualified plan from the present level of 10 percent of earned income up to $2,500 a year to 15 percent of earned income up to $7,500 a year. For H.R. 10 plans which are of the defined benefit type, provision is made for applying comparable limitations on the benefits that may be paid to self-employed individuals under regulations to be prescribed by the Secretary of the Treasury or his delegate

In keeping with the major objective of securing more uniform tax treatment of self-employed people and corporate individuals under qualified retirement plans, contributions or benefits for self-employed people under qualified plans are also made subject to the same overall limitations that are placed on contributions or benefits for regular employees under qualified plans.

Your committee has also made provision to allow self-employed individuals, whose earned income fluctuates sharply, declining to low levels in some years, to continue to set aside a specified minimum amount regularly for retirement under an H.R. 10 plan. This is achieved by permitting a self-employed individual to deduct contributions to such plans amounting to $750 or 100 percent of their earned income, whichever is less, even though these amounts are in excess of the regular deduction limits.

The new more liberal limitations on contributions or benefits for self-employed people under qualified plans are also to apply to shareholder employees of subchapter S corporations—small business corporations—who are generally subject to the same limitations as self-employed people under qualified plans. This means, for example, that contributions of up to the lesser of 15 percent of earned income or $7,500 a year may be made under qualified defined contribution plans on behalf of such shareholder employees without giving rise to current tax for them.

In addition, provision is made to insure that self-employed individuals who wish to utilize the full maximum tax allowance for their own contributions will also provide significant pension contributions for their regular employees who are covered by the pension plan. This is achieved by allowing self-employed people to count no more than $100,000 of their earned income in computing pension contributions or benefits for themselves. This prevents a self-employed individual with an extremely large income from achieving the $7,500 maximum annual deduction for his own pension contribution through the use of a low contribution rate which would be detrimental to his employees since the pension contributions on their behalf are computed using the same contribution rate. For example, a self-employed individual who counts his first $100,000 of earned income for this purpose, must contribute to the plan at least 7.5 percent of the wages of his covered employees in order to be permitted a deductible contribution of $7,500 on his own behalf.

Finally, your committee adopted provisions to improve the effectiveness of H.R. 10 plans in achieving their retirement objectives and preventing abuses in the operation of such plans. Present law disqualifies the plan if willful contributions in excess of the allowable limits are made on behalf of owner-employees since such excess contributions unduly build up their tax-free accumulations in the plan.

Experience has shown that this is not an adequate remedy since disqualification of the plan for excess contributions on behalf of owner-employees penalizes the regular employees who are not in any way responsible for the excess contributions. For this reason, instead of disqualifying the plan, where excess contributions are made on behalf of the self-employed individuals, the bill adopts a new more effective penalty; namely, a tax on the employer, amounting to 6 percent a year on the amount of the excess contribution. In addition, to discourage premature withdrawal of the H.R. 10 funds by owner-employees prior to retirement age, withdrawals before such individuals attain the age of 59½, except in case of disability, are subject to an additional tax amounting to 10 percent of such premature contributions.

The new more liberal limits in regard to contributions on behalf of self-employed people under H.R. 10 plans are effective for taxable years beginning after December 31, 1973. However, the new limits on benefits under defined H.R. 10 benefit plans, which are designed to secure comparability with the limitations applying to H.R. 10 plans of the defined contribution type, the 6-percent tax on excess contributions for self-employed individuals, and the 10-percent tax on premature withdrawals by owner-employees are effective for taxable years beginning after December 31, 1975.

Overall limitations on contributions and benefits for employees under plans.—In view of the vital role that the favorable tax treatment accorded under the Internal Revenue Code plays in stimulating the growth and development of nondiscriminatory retirement plans, your committee believes that it is essential to continue this treatment. In fact, as noted above, the bill adopted by your committee extends the favorable tax treatment more generally by increasing the allowable deductible contributions of self-employed people under H.R. 10 plans and by providing for the establishment of limited retirement savings plans for individuals who are not covered by qualified retirement plans.

However, after careful consideration, your committee has concluded that it is not in the public interest to make the substantial favored tax treatment associated with qualified retirement plans available without any specific limitation as to the size of the contributions or the amount of benefits that can be provided under such plans. The fact that present law does not provide such specific limitations has made it possible for extremely large contributions and benefits to be made under qualified plans for some highly paid individuals. While there is, of course, no objection to large retirement benefits in themselves, your committee believes it is not appropriate to finance extremely large benefits in part at public expense through the use of the special tax treatment. Moreover, the fact that there are no specific limits on the size of the contributions or benefits that may be made under qualified plans on behalf of highly paid employees discriminates against the self-employed whose contributions or benefits under H.R. 10 plans are limited by law. For this reason, your committee has provided specific limitations on the amount of contributions and benefits that can be provided for any one individual under a qualified plan. These limitations, which apply to both employees and self-employed people under qualified plans, have been designed to avoid abuse of the favored tax treatment to finance extremely large pensions. However, the limitations are gen-

erous enough to permit substantial retirement benefits which are adequate judged from any reasonable standard.

Under the defined contribution plans—money-purchase pension plans and profit-sharing plans—the sum of the employer's contributions for the employee, a specified portion of the employee's own contributions, and any forfeitures allocated to the employee cannot exceed 25 percent of the employee's compensation or $25,000, whichever is less. These limits would also apply to contributions made to qualified plans of exempt organizations under section 403(b).

Your committee decided to take employee contributions to qualified plans into account for purposes of this contribution limit because the employee gets a tax advantage from the fact that the earnings on his contributions remain free of tax so long as they are kept in the plan, thus permitting a tax-free buildup of funds. However, unlike employer contributions under qualified plans, employee contributions are made out of taxed income. For this reason, for purposes of counting employee contributions for purposes of the 25 percent and $25,000 annual limits on contributions on behalf of any employee under a defined contribution plan, there is to be excluded the greater of (*a*) employee contributions amounting to 6 percent of compensation or (*b*) one-half of the employee's contributions.

For plans which provide defined benefits, your committee has phrased the limit in terms of the amount of annual benefits that may be paid to a participant. More specifically, the annual benefit paid under such plans cannot exceed 100 percent of the participant's average compensation for his highest 3 years of earnings, regardless of the age at which the benefits start, or $75,000 beginning at age 55 or later, whichever is less. Where the annual benefit starts before age 55, the $75,000 annual limit on benefits is adjusted downward actuarially. However, avoid any possible adverse effect on individuals with relatively modest retirement benefits, this benefit limitation is not to apply to retirement benefits which do not exceed $10,000 for the plan year or for any prior plan year. This exception from the benefit limitation is available only where the employer has not at any time maintained a defined contribution plan in which the participant was covered.

While any specific dollar limit on the amount of benefits under qualified plans is necessarily a matter of judgment, your committee believes that the annual limitation of $75,000 at age 55 or later achieves a reasonable balance in view of the considerations involved. Benefits starting at any age are allowed to amount to as much as 100 percent of average pay during the high 3 years of earnings after study disclosed that any lower percentage limit would adversely affect individuals with relatively modest earnings who are covered under generous plans. Your committee believes that it would be unwise to discourage liberal benefits for such individuals.

As noted above, the $75,000 annual limit is applied to a benefit financed by the employer which is payable in the form of a straight life annuity beginning at age 55. Correspondingly higher benefits may be paid to the extent that they are financed by employee contributions. No actuarial adjustment is required to be made in the maximum annual limit on benefits under defined benefit plans where ancillary benefits which are not related to retirement are provided. For example,

no downward actuarial adjustment in the limit is to be required for disability benefits before normal retirement age. In addition, no downward adjustment is to be made for a normal joint and survivor feature.

Moreover, to prevent abuse, the full maximum benefit may be paid only to individuals who have 10 years or more of service. Where an individual has served for less than 10 years, the maximum permissible benefit is reduced proportionately.

The contribution and benefit limits are applied in a way which prevents any individual from securing higher limits for himself merely because he is covered by several retirement plans financed by the same employer. For purposes of applying these limits, all defined contribution plans established by an employer are combined and treated as one defined contribution plan, and all defined benefit plans established by an employer are combined and treated as one defined benefit plan.

Also, if an individual is covered by both a defined contribution plan and a defined benefit plan established by his employer, then an overall limit is applied to coordinate the two limits discussed above. In this case, the sum of one, the percentage utilization of the maximum limit under the defined benefit plan and two, the percentage utilization of the maximum limit under the defined contribution plan cannot exceed 140 percent. For example, if, under the defined benefit plan, the employee is to receive a pension of $75,000 a year—using up 100 percent of the defined benefits limit—then the maximum additions to his defined contributions plan may not exceed 40 percent of what would otherwise be his defined contributions limit. Put another way, this overall limit, if both types of plans are used equally, may be satisfied by using up 70 percent of the limits applicable to each type of plan.

The rule described above is not intended to require the aggregation of section 403(b) plans which the participant did not control with qualified plans which the participant did not control. For example, a teacher who is covered by a section 403(b) plan as well as by a qualified State or local government plan which he did not control would not be forced to aggregate his contributions and benefits under the two plans.

Because of the vital importance of maintaining the real value of retirement benefits, the bill instructs the Secretary or his delegate, through regulations, to make annual adjustments in the allowable limits to take account of increases in the cost of living. This includes adjustments in the $75,000 annual limit to benefits paid by defined benefit plans, the $25,000 limit to contributions under defined contribution plans and, in the case of a participant who was separated from service with the firm, the amount of his average earnings in his highest compensated 3 consecutive years of service.

Your committee has provided adequate time for adjustment to the new limits on benefits and contributions under retirement plans. In general, these limits apply to contributions made or benefits accrued in years beginning after December 31, 1975. However, to ease the transition to the new rules, an active participant in a defined benefit plan on October 2, 1973, will be permitted to receive an annual benefit, based on his annual rate of compensation on that date and the plan provisions in effect on that date, which exceeds $75,000 a year, provided the benefit does not exceed 100 percent of his annual compen-

sation on October 2, 1973. Where this "grandfather" treatment is utilized, the cost-of-living adjustments in the limits, described above, are not available.

Finally, because the objective of the limits on contributions and benefits is to keep the tax advantages associated with qualified plans within reasonable bounds and not to restrict the amount of retirement benefits that may be paid to individuals under other arrangements, the bill specifically indicates that nothing in the provisions relating to such limits (or in the provisions of the bill which relate to minimum funding standards) is to be construed to require the disqualification of any plan solely because additional benefits are provided to the employee under nonqualified portions of the plans.

Lump-sum distributions under qualified plans.—Prior to the Tax Reform Act of 1969, lump-sum distributions made by qualified pension plans were generally taxed as long-term capital gains. Such capital gains treatment, however, had the disadvantage of allowing employees to receive substantial amounts of deferred compensation in the form of lump-sum pension distributions at more favorable tax rates than other compensation received currently. The 1969 Tax Reform Act sought to ameliorate this problem by providing that any part of such lump-sum distributions which represented employer contributions accrued in plan years begnning after 1969 was to be taxed as ordinary income rather than as capital gains. In addition, the 1969 act provided a special 7-year averaging procedure for the portion of the lump-sum distribution taxed as ordinary income.

However, while the 1969 provisions were intended to provide more equitable treatment for such lump-sum pension distributions, they have not achieved their purpose. The Treasury has had great difficulty in providing regulations to carry out this provision. Problems have arisen both in determining the amount of the ordinary income element of a distribution and in determining the precise amount of tax imposed on account of the "ordinary income" element. Moreover, in practice the new proposed regulations have proved to be very complex and it is frequently maintained that individuals receiving lump-sum distributions have been unable to compute their taxes and that accountants and tax lawyers have been refusing to attempt the computations.

Your committee believes that this situation cannot be permitted to continue. For this reason, it has provided a new method of taxing such lump-sum pension distributions which is relatively simple and yet at the same time equitable. Under the new provision, that portion of the distribution representing pre-1974 value receives capital gains treatment. The balance of the lump-sum distribution is to be taxed as ordinary income under a separate tax schedule—the tax schedule applicable to single people—generally without reductions, exclusions, or consideration of the taxpayer's other income. However, to insure that the tax paid by lower income individuals on their lum-sum distributions will generally not be more than under present law, a special minimum distribution allowance is provided under the separate tax rate schedule. In addition, averaging relief is provided for the portion of the lump-sum distribution which is taxed as ordinary income under the separate tax rate schedule by providing 10-year averaging for such income. This in effect provides a tax payable at the time of the

distribution, but no greater in amount than the taxpayer could expect to pay were the income to be spread over his remaining life expectancy.

The new treatment of lump-sum distributions from qualified retirement plans is to apply to distributions made after December 31, 1973, in taxable years beginning after that date.

Salary reduction plans: Under present law, employee contributions to qualified retirement plans are generally made out of taxed income without any tax allowance. However, in certain cases, employees have entered into arrangements with employers to accept salary reductions in return for contributions on their behalf to qualified retirement plans. If employer contributions to such plans are not taxed currently to the covered employees, this results in tax advantages for the covered employees as compared with making their own contributions to the retirement plan. Until the latter part of 1972, the Internal Revenue Service under administrative rulings recognized such salary reduction plans, providing that the amount of the reduction was not in excess of 6 percent of compensation and the plan met certain antidiscrimination requirements.

However, on December 6, 1972, the Internal Revenue Service issued proposed regulations, providing that amounts contributed by an employer to a retirement plan in return for a reduction in the employee's basic or regular compensation or in lieu of an increase in such compensation are to be considered to have been contributed by the employee and consequently be taxable income to the employee.

The proposed regulations dealing with salary reduction plans raise major issues of tax policy. The basic question is the extent to which employees should be allowed to convert what would otherwise be a nondeductible employee contribution to a retirement plan to tax-deferred employer contributions on their behalf. This, in turn, involves issues regarding the equitable treatment under the tax laws of employee contributions and employer contributions to qualified retirement plans.

In view of these basic issues, your committee has concluded that it would be desirable for the Internal Revenue Service to defer action on its regulations until the Congress has had further opportunity to consider this matter. For this reason, the bill directs the Secretary of the Treasury to withdraw the proposed salary reduction regulations issued on December 6, 1972. Moreover, no other salary reduction regulations may be issued in proposed form before January 1, 1975, or in final form before March 16, 1975. The bill further specifies that until new salary reduction regulations have been issued in final form, the law with regard to salary reduction plans is to be administered along the lines of the administration before January 1, 1972. Any salary reduction regulations which become final after March 15, 1975, for purposes of individual income tax, are not to take effect before January 1, 1975.

Labor unions providing pension benefits.—Your committee considered a provision recognizing the right of tax-exempt labor unions to provide pension benefits to its members from funds derived from members' contributions and the earnings on the contributions, without affecting their tax-exempt status. However, the committee concluded that labor unions are permitted to provide benefits in this manner under present law and as a result it decided such a provision is unnecessary. The Internal Revenue Service has recognized this result

in a published ruling which provides "that payment by a labor organization of death, sick, accident or similar benefits to its individual members with funds contributed by its members, if made under a plan which has as its object the betterment of the conditions of the members does not preclude exemption of the organization under section 501(c)(5) of the code."

REVENUE EFFECT

There are several kinds of revenue effects which can be expected to arise from H.R. 12855.

First, three provisions designed to equalize the tax treatment of pensions have an impact on tax deductions. These are the provisions raising the maximum deductible amount that the self-employed can set aside annually for their retirement; making provision for employee retirement savings deductions for those not now covered under qualified retirement plans, Government plans, or section 403(b) plans; and a provision which limits the maximum retirement benefit and the maximum deductible contribution on behalf of employees.

Tax revenues are also affected by the modification of the tax treatment of lump-sum distributions.

Finally, a third category of revenue effect from the bill arises not because of any change in tax deductions as such, but rather because increased amounts may be set aside by employees for vesting and funding. The bill imposes additional requirements in the areas of vesting and funding which must be met if the present favorable treatment for pensions is to continue to be available. These new requirements may result in employers making larger contributions to retirement plans, resulting in larger income tax deductions.

Provisions designed to equalized tax treatment of retirement plans: It is estimated that the provision increasing the maximum annual deductible pension contribution by self-employed persons on their own behalf to the greater of $750—but not in excess of earned income—or 15 percent of earned income—up to $7,500—will result in an annual revenue loss of $175 million.

The provision allowing an individual not covered by a qualified retirement plan, Government plan, or section 403(b) plan to deduct annually the lesser of $1,500 or 20 percent of compensation for contributions by him or on his behalf to a tax-exempt retirement account, annuity, or bond plan established by him, or to certain trusts established by employers or associations of employers, is estimated to involve a revenue loss amounting to $225 million for 1974 and rising to $355 million for 1977, at 1973 income levels.

On the other hand, a revenue increase of $10 million a year at 1973 income levels is estimated to result from limiting the maximum annual benefit under defined benefit plans to the lesser of $75,000—where benefits begin at age 55 or later—or 100 percent of average compensation for the 3 consecutive calendar years aggregating the highest compensation and limiting annual contributions under defined contribution plans to the lesser of $25,000 or 25 percent of compensation, with a cost-of-living adjustment to the dollar ceilings in the case of active participants and to the resultant amount under the 100-percent rule in the case of participants separated from service.

Altogether, when fully effective, these three provisions involve an estimated annual net revenue loss of $520 million.

Tax treatment of lump-sum distributions: The revised tax treatment of lump-sum distributions from retirement plans, which provides for taxing that part of lump-sum distributions which is attributable to 1974 and later years as ordinary income subject to 10-year averaging, is expected to result in the long run in annual revenue gains amounting to $60 million a year based on 1973 levels of income.

Revenue effect of minimum vesting and funding provisions: The new minimum vesting standards, which generally become effective for plan years beginning after 1975, will also involve an indirect loss of revenue, ranging from zero to an estimated $265 million a year, at 1973 income levels.

The minimum vesting requirement involves little or no revenue loss to the extent that the benefit levels of plans are adjusted to absorb the increased employer costs resulting from the requirement. This is because, in that event, the requirement would have no effect on the deductions taken for contributions to plans or on the taxable income of covered employees. If the additional amounts required to be contributed to pension plans as a result of the vesting standards are a substitute for cash wages, rather than a net addition to cash wages, the annual revenue loss is estimated at $130 million. This could occur, for example, if the additional employer payments into the pension plan are taken into consideration in setting future wage increases. In this event, the revenue loss results from the fact that the covered employees are permitted to postpone payment of tax on the employer contributions involved, instead of being required to pay tax currently, as would be the case had they received an equivalent amount of wages. Some part of this postponed $130 million of taxes presumably will be recovered in the future in tax payments on the benefits paid out by the plan.

The upper range of the estimate, $265 million, represents the revenue loss if it is assumed that the additional employer payments into the pension plans required by the new vesting standards constitute an addition to the cash wages that will be paid in any event. In this case employers will have large total wage bills, for the sum of cash wages and wage supplement, and hence will take larger tax deductions, giving rise to a $265 million revenue loss.

It appears that realistically there is likely to be a combination of the three effects suggested above.

No revenue estimate is given for the increased funding requirements under the bill. Data are not available which would make a reliable estimate of this type possible. However, it is believed that the minimum funding requirements will have a relatively modest revenue effect.

I yield to our very able and distinguished colleague from Michigan, who has served with such distinction on the Committee on Ways and Means. We learned with a great deal of sorrow the other day that she will not be with us another year, but her service has been tremendous and outstanding and her impact on this bill has been vital.

Mrs. GRIFFITHS. Mr. Chairman, I would like to make clear my understanding of this, that is, I would like to recite my understanding and ask if the gentleman would agree with this.

The effective date provisions of title II of the substitute, relating to participation and vesting will, as I understand them, be interpreted in a way that insures against disruption of collective bargaining agreements concluded under present law. For example, 3-year collective bargaining agreements were negotiated in the car and truck industry in 1973, and these generally may be reopened in 1976, although major provisions of the pension plans under the agreements cannot be reopened before 1979. The committee report on H.R. 12855—which is the source of title II—at pages 51 and 52 makes it clear that the effective date provisions in this situation will leave the pension plan provisions undisturbed until 1979 even though relatively narrow pension issues, illustrated by the examples in the report, may be reopened in 1976.

The committee report also clarifies the situation where the employer has a second pension plan, primarily for non-union employees, which is essentially the same as the collectively bargained plan. From the report it is clear that the two plans will be considered as one for purposes of applying the delayed effective date provisions of title II of the substitute. Thus, in the car and truck industry example, amendment as to both plans would first be required in 1979.

Would that be the understanding of the gentleman from Oregon?

Mr. ULLMAN. Mr. Chairman, that is my understanding.

Mrs. GRIFFITHS. There is a related situation that arises because of union opposition to contributory features in a collectively bargained plan, and the desire of other employees for the additional security the plan can provide if they contribute toward their own retirement benefits. In this situation, the employer's second plan typically consists of noncontributory features essentially the same as are found in the collectively bargained plan, plus additional features relating to employee contributions and to the additional retirement benefits provided for employees who contribute. Several of the companies having collectively bargained plans follow different patterns in the "second plans".

It is my understanding that the rules of interpretation set forth in the committee report will require, in this situation, that the collectively bargained plan and part of the employer's second plan consisting of essentially similar noncontributory features will be considered as one plan for purposes of applying the deferred effective date provisions of the bill, with amendments first required in 1979. On the other hand, I understand that the remaining portion of the second plan, consisting of the features relating to employee contributions and related benefits, would not be entitled to the delayed effective date provisions, so that any amendments would be required in 1976.

Is my understanding in respect of these matters correct?

Mr. ULLMAN. The gentlewoman's understanding is entirely correct.

Mrs. GRIFFITHS. It is my further understanding that this matching of the collectively bargained plan and the related part of the second plan will be only for the limited purpose of determining the application of the delayed effective date provisions. For example, this rule of

interpretation will not adversely affect the employer's right to continue to treat both parts of the second plan as a single plan for qualification purpose under section 401(a) of the code. Am I correct in this understanding also?

Mr. ULLMAN. The gentlewoman's understanding in this regard is entirely correct.

Mrs. GRIFFITHS. Mr. Chairman, I thank the gentleman from Oregon very much.

The CHAIRMAN. The time of the gentleman from Oregon has expired.

Mr. ULLMAN. Mr. Chairman, I yield myself 2 additional minutes.

Mr. KARTH. Mr. Chairman, will the gentleman yield?

Mr. ULLMAN. Mr. Chairman, I yield to the gentleman from Minnesota (Mr. Karth), a member of the committee.

Mr. KARTH. Mr. Chairman, I thank the gentleman for yielding.

So that some legislative history can be made on that subject, I ask the following question:

Mr. Chairman, the bill provides that a plan may be retroactively amended within a limited period of time without the approval of the Secretary of Labor. Do you agree that within limits specified by the bill, a plan may be amended under this provision to reduce plan liabilities that have accrued in a previous year and thereby eliminate a funding deficiency and also avoid the excise taxes that otherwise would have been due on the funding deficiency?

Mr. ULLMAN. The gentleman is correct. Under the bill, if there is an accumulated funding deficiency with respect to a plan as of the end of a plan year, the plan may be amended after the end of that plan year. Such an amendment could be effective as of a date within that year to reduce the benefits accrued under the plan in that year and thereafter. This could eliminate a funding deficiency that otherwise would have occurred during that year, and also avoid the excise taxes that otherwise would have been due. This may be done only within a limited time period without the approval of the Secretary of Labor as specified in the bill. The purpose of allowing this type of amendment is to allow plans an opportunity to correct unforeseen funding deficiencies without being subject to a penalty.

There are a number of ways that a retroactive amendment might be made without the approval of the Secretary of Labor to reduce an accumulated funding deficiency and avoid the excise taxes. For example, if the benefits accrued under the plan initially were $5 per month per years of service—up to a maximum of 25 years of service under a plan using the 3-percent vesting rule— and it was determined that an accumulated funding deficiency had occurred at the end of the plan year but could be avoided by reducing the $5 benefit to $4, the plan might be amended to reduce benefits accrued—whether or not vested—during the year in question and for future years.

Following this example, if the benefits were reduced from $5 to $4 per month for all years of service, a person who had 10 years of service at the beginning of the plan year in question would have accrued $50 per month of benefits. These $50 of benefits would not be reduced by the amendment in question, but this individual would not accrue additional benefits under the amendment until after he had

$12\frac{1}{2}$ years of service in the plan, at which time he would have accrued \$50 in benefits under the new benefit schedule—\$4 times $12\frac{1}{2}$ years.

For single employers plans, such amendments may be made without approval of the Secretary of Labor within the time required to file the employer's tax return for the year in question. For multiemployer plans, such an amendment may be made without the approval of the Secretary of Labor within 2 calendar years after the end of the plan year for which the amendments are to be effective. For example, with a multiemployer plan if a funding deficiency would have occurred for a plan year ending on December 31, 1980, the plan could be amended on or before December 31, 1982, to reduce benefits that otherwise would have accrued after the beginning of the plan year that ended on December 31, 1980.

Mr KARTH. Mr. Chairman, I thank the gentleman very much. If he would yield for just another moment, may I proffer the same question to the distinguished gentleman from Pennsylvania (Mr. Gaydos)?

Mr. GAYDOS. Mr. Chairman, in response to the gentleman from Minnesota, the question was thoroughly discussed with Chairman Dent. He was momentarily called from the floor, but authorizes me as a matter of record to respond to the question by emphatically agreeing with Mr. Ullman.

Mr. KARTH. Mr. Chairman, I thank the gentleman for yielding.

Mr. SCHNEEBELI. Mr Chairman, I yield myself 7 minutes.

Mr. BROYHILL of Virginia. Mr. Chairman, will the gentleman yield?

Mr. SCHNEEBELI. I yield to the gentleman from Virginia, a valued member of the committee.

Mr. BROYHILL of Virginia. Mr. Chairman, I rise in support of H.R. 2 and the amendments of the Education and Labor Committee and the Ways and Means Committee which will be offered to it. The joint package which has been put together by these two committees represents an important milestone along the road to equity in the private pension system.

I wish to direct my remarks today to several aspects of this legislation which relate to the pensions of public employees—both at the Federal level and at the State and local level.

The bill before us provides increased protection to workers in the private sector by imposing new standards for participation, vesting, and funding of their pension plans. During consideration of this legislation, the Committee on Ways and Means spent a considerable amount of time on the question of whether these standards should be applicable to Government plans generally. I continually made the argument that public employees should be afforded at least as much protection and given equal consideration in our tax laws as those workers in the private sector.

Under present law, the civil service retirement system and most employees retirement plans of State and local governments are qualified under the tax law; that is, the employees covered by those plans do not have to take into account currently for income tax purposes the contributions to those plans made by their employers. Rather, they can defer the payment of tax until they receive the pension benefits during retirement. At that time, presumably, they will be in lower tax

brackets and, therefore, will be paying a lower rate of tax. There are also certain other tax benefits resulting from the plan being considered qualified.

During discussion of whether to include Government plans under this bill, it became apparent that many of the plans—including the Federal plan—might be unable to meet the new participation, vesting and funding standards with the result that they would lose their "qualified" status and the workers covered by them would be denied the special tax benefits previously described. Such a result is, of course, totally unacceptable and, therefore, the committee decided to exempt these Government plans from the requirements of the bill thus allowing them to continue to remain qualified as under present law. However, in order to determine the desirability of ultimately bringing Government plans under the new standards, both the Education and Labor Committee and the Ways and Means Committee have been charged with conducting studies of this entire question. The committees are to report to the House on the results of these studies no later than December 31, 1976. I plan to take an active role in the study to be conducted by the Ways and Means Committee.

Another provision in this legislation of great significance is the one establishing individual retirement accounts for that half of the work force not presently covered by any penson plan. This is another stride toward equity and will make it possible for millions of workers who would have no private pension at retirement to provide one for themselves and their families. Such a device is in the best tradition of self-help and in contrast to total reliance on the Government.

The original IRA proposal submitted by the administration was broader in coverage than the one adopted by the committee and recommended in its report. Simply stated, the administration's proposed IRA would have allowed employees covered by plans with low benefit levels to establish and contribute tax free to an IRA as a supplement to their regular pension plan. Since a person with a poor pension plan needs more security than those with better benefits, such an approach makes sense. The provision would have made it possible for a large number of Government workers in the lower wage brackets to establish IRA's and thus help improve their own retirement income situation. Basically, those Government employees making less than $10,000 per year would have been eligible.

Unfortunately, despite every effort the committee decided to not include the IRA provision for the low benefit plans due in part to the revenue loss which would have occurred if this had been included. I was distressed that this decision was made but feel that the establishment of IRA's in general is important. In the future I plan to work for inclusion of a provision which will allow workers under low benefit plans—including the Federal civil servants—to participate in IRA.

Finally, Mr. Chairman, I want to briefly discuss the increase in allowable pension deductions for self-employed persons. Under present law, the annual deductible contribution a self-employed individual can make to a so-called H.R. 10 plan is the lesser of 10 percent of his earned income or $2,500. This low limit—in contrast to no limit on the contributions corporate employees can make—has caused serious

equity problems in the pension law field. In many instances, self-employed persons have established professional service corporations in order to be able to set aside amounts necessary for an adequate retirement pension. Such a course should not be necessary.

In an effort to balance the equities between corporate and self-employed employees, this legislation would increase the deductible amounts for H.R. 10 plans to the lesser of 15 percent of earned income or $7,500 per year. This is an essential increase and should be supported.

Finally, I would like to mention another item which is not in this bill but is related to the pension area. I am referring to the need to liberalize the retirement income credit. The retirement income credit is intended to equate the tax treatment of individuals with retirement income but no social security coverage with those who are covered by social security. It is of particular value to many Federal employees who are covered under the Federal civil service retirement plan but not social security.

The credit provisions have long needed to be updated and simplified and this was done in H.R. 1 in 1971 by both the House and Senate but was dropped in conference. I again raised the issue during consideration of the pension legislation and the committee urged that this change be delayed until we take up general tax reform. I have been patient about this matter but the time for making necessary adjustments to liberalize the retirement incomes credit is past and I shall press with all my energy to see that it is achieved in our tax reform bill so that those retirees who are supposed to benefit from the credit will be able to do so.

Mr. Chairman, I believe this pension legislation is as important to the future generations as to those presently covered by pension plans. It may require certain changes in the future including those I have mentioned but it is a solid base upon which to build. I urge its passage.

(Mr. Schneebeli asked and was given permission to revise and extend his remarks.)

Mr. Schneebeli. Mr. Chairman, the legislation before the House provides needed reform of the present rules governing private pension programs. Since 1942, significant incentives have been contained in the income tax law to encourage employers to develop pension plans benefiting their employees on a broad and nondiscriminatory basis.

Our private retirement system has grown rapidly under these rules. In 1940, it was estimated that 4 million employees were covered by pension programs. Estimated coverage grew to 9.8 million in 1950 and then to between 23 and 30 million today. It is expected to grow to 42 million by 1980.

Between 1950 and 1970 contributions grew from $2.1 billion to $14 billion. During the same period the number of beneficiaries grew from 450,000 to 4.7 million, with benefits increasing from $370 million to $7.4 billion. During the last 30 years, assets of retirement plans rose from $12.1 billion to $150 billion, and it is estimated that they will increase to $225 billion by 1980. This is an important segment of our economy—a huge potential purchasing power.

This is a commendable record, and we should continue to encourage private economic security measures within a framework that is fair

to all of our citizens. This requires us to focus on areas of existing law that need improvement. The legislation before the House does precisely this.

There is a need to increase coverage, to provide greater vesting of accrued benefits, and to remedy inadequate funding.

We also need to improve equity between corporate employees and the self-employed as well as provide a mechanism for employees to save for retirement even when their employers decline to establish a pension program. Administration should be improved, fiduciary standards and disclosure rules strengthened, and termination insurance considered.

The substitute bill before the House today deals fully with all these problems. In developing legislation there has been a division of responsibilities on some items and shared responsibilities on other items, by the Education and Labor Committee and the Ways and Means Committee. The portion of the substitute reported by the Education and Labor Committee (H.R. 12906) deals with the subject of fiduciary standards, reporting and disclosure, and plan termination insurance. These matters are not, therefore, dealt with in the portion of the substitute reported from the Ways and Means Committee (H.R. 12855). The Ways and Means Committee dealt with all the matters relating to the taxation of private pension plans, and the bill from the Education and Labor Committee, therefore, contains no provisions in this regard.

However, in the areas of eligibility and participation, vesting, and funding, the two committees shared responsibility, and the bills reported by both committees contain provisions on these subjects which are substantially identical. A requirement for joint regulation contained in the substitute is designed to insure that there will be uniformity of interpretation of these standards by the executive branch.

One of the central features of the substitute before the House is the improved rules provided for eligibility and participation, vesting, and funding. The legislation will generally require that a retirement plan cover individuals after they attain age 25 or complete 1 year of service, whichever is later.

Additionally, plans must meet one of three alternative rules relating to vesting of benefits. In framing these rules the committee attempted to improve employee protection while avoiding the imposition of costs that would discourage the establishment of new plans and the broadening of benefits for an existing plan.

The first alternative gradually increases vesting over a period of years, resulting in 25 percent vesting at the end of 5 years, 50 percent vesting at the end of 10 years, and 100 percent vesting at the end of 15 years. The second option is the so-called "Rule of 45," requiring that an individual with 5 years of service have a vested right of 50 percent when the sum of his age and years of service equals 45, with the remaining benefits vesting uniformly over an additional 5-year period. The third option provides for 100 percent vesting when an individual has 10 years of service. The different options should provide flexibility that will accommodate individual circumstances and varying conditions.

The only requirements relating to funding under existing law are those promulgated under the Internal Revenue Code. They require the

funding of current liabilities as well as the payment of interest due on past service costs. While this keeps the amount of unfunded pension liabilities from increasing, it does not require the amortization of existing unfunded liabilities. The new rules would require that existing past service liabilities be amortized over a 40-year period. Past service liabilities created by plan amendment and the establishment of new plans will be amortized over a 30-year period, while existing gains and losses will be amortized over a 15-year period. Special rules are provided for multiemployer plans. Additionally, extensions would be available under certain circumstances.

The proposed legislation also provides greater equity between self-employed individuals and corporate employees. Under existing law there are generally no limitations on the benefits an employee can receive from a qualified plan. Presently a self-employed individual may only deduct 10 percent of his earned income or $2,500 in a given year, whichever is less. This disparity is not only inequitable, but has provided a substantial incentive for the incorporating businesses in order to get the more generous pension benefits applicable to corporate employees.

This disparity between the unincorporated and the incorporated self-employed persons is in part remedied by increasing the limit of 10 percent of earned income or $2,500 on deductions for the self-employed to 15 percent of earned income or $7,500. This increase is also justified because of substantial inflation that has occurred during the 10 years since the Self-Employed Individuals Tax Retirement Act, was first enacted.

Additionally, the bill places overall limitations on the amount of deductible contributions that may be made in the case of defined benefit plans and money purchase plans covering corporate employees. While providing generous limits on the amount of retirement income that can be set aside, the bill recognizes that after a certain point an individual should save out of pretax dollars. While accomplishing this through the limitation imposed on these plans, the bill also narrows the disparity between benefits provided the self-employed and corporate employees.

This legislation also contains provisions enabling an employee to establish his own individual retirement account, IRA, when his employer has not established a qualified plan in which he can participate. This program, recommended by the Treasury and pushed vigorously and effectively in committee by Congressman Brotzman will enable an individual in these circumstances to deduct contributions of up to 20 percent of earned income, as long as this amount is not in excess of $1,500. The amount contributed can be set aside in a special custodial account. Like qualified retirement plans, the account will draw interest tax free during an individual's working years, and he will not pay taxes on this amount until he begins drawing retirement benefits.

There are other changes in the existing law and its administration that I will not discuss in detail. Some of my colleagues will do so. However, the bill does provide for a separate administrative unit in the Internal Revenue Service to supervise exempt organizations and pension plans. Judical remedies are provided for plans receiving ad-

verse rulings from the Internal Revenue Service, and the Social Security Administration is required to maintain certain information on benefits accrued under private pension plans.

Mr. Chairman, this is an extremely comprehensive and complex bill that will have a pervasive effect on private economic security measures. It is a needed bill and despite many difficulties I believe it has been carefully worked out on the House side. In view of the magnitude of the new program, legislative oversight will be required and changes will undoubtedly be in order as we gain experience. However, the legislation before the House is a needed step forward and I urge my colleagues to join me in supporting it.

Mr. Chairman, I yield at this time 7 minutes to the gentleman from Illinois (Mr. Collier).

(Mr. Collier asked and was given permission to revise and extend his remarks.)

Mr. Collier. Mr. Chairman, the legislation before the House represents the first comprehensive overhauling of legislation affecting private pensions since I have been in Congress. There have been improvements of significance through the years, but Congress has not undertaken the pervasive review of pension legislation that the measure before the House today represents.

In the last 30 years, private economic security measures have grown profoundly. Undoubtedly, the incentives contained in the tax law for employers to provide nondiscriminatory plans for their employees have played a significant role. It is estimated that as many as 30 million employees were covered by private pension plans in 1972, and 42 million employees are expected to be covered by 1980—even without the changes provided by this bill. In 1970, $14 billion was contributed to pension plans by employees and their employers and 4.7 million individuals receive $7.5 billion in payments. The assets of pension plans now exceed $150 billion and are expected to reach $225 billion by 1980.

Despite the significant progress we have experienced, there are areas of the law that need improving. Coverage should be expanded, vesting improved, adequate funding provided, honest, open and efficient administration assured, and protection against plan terminations considered.

The substitute before the House deals with all of these measures. The portion of the substitute developed by the Education and Labor Committee deals with fiduciary standards, reporting and disclosure, and plan termination. The Ways and Means Committee portion of the substitute deals with the taxation of private pension plans. Additionally, both the bill reported by Education and Labor and the bill reported by Ways and Means provide common standards relating to eligibility and participation, vesting, and funding. The standards are virtually identical and it is provided that joint regulations will be used to insure uniformity of interpretation. If not, the bill is too comprehensive to discuss in its entirety, and it has been adequately explained in a general way by speakers who have preceded me.

However, I would like to express my support for the legislation as it now stands and providing it is not emasculated by amendment and particularly for the central core of the substitute improving coverage, vesting, and funding. These provisions were carefully worked out to

insure flexibility accommodating the individual characteristics of different plans and to balance the disincentives for wider coverage associated with increased costs against the need to provide greater protection. I think the bill in this regard represents a significant improvement over existing law.

I would like to address myself specifically to the improvements in the Self-Employed Individuals Tax Retirement Act. It has been about 10 years since we enacted this landmark legislation, and the present annual limitation on deductible contributions for self-employed individuals of 10 percent of earned income or $2,500, whichever is less, has been severely eroded by inflation.

Additionally, these limitations have provided incentives for individuals to incorporate in order to avail themselves of the more generous benefits available to corporate employees. The form in which a particular business activity is conducted should not be so directly dependent upon tax consequences.

The bill reported by the Ways and Means Committee would increase the present limitation applicable to the self-employed to 15 percent of earned income or $7,500, whichever is less. This significant increase will provide greater equity for self-employed individuals vis-a-vis employees in general, and will also provide substantial incentives for self-employed individuals to establish qualified plans providing for the economic security of their employees. The present rules require immediate vesting in the case of self-employed plans and these requirements would be maintained. Thus, these increases are justified both by historical events, considerations of equity, and the need to insure broader coverage.

I also feel the provisions of the bill enabling employees who do not have access to qualified employer plans to establish an individual retirement account, IRA, on their own behalf should be enacted. Under this procedure, an employee could contribute 20 percent of his earnings up to a maximum contribution of $1,500 annually. This contribution would be deductible and interest on the IRA would accumulate tax free during the individual's working years. The account would be administered by a bank, life insurance, savings and loan, or other appropriately qualified financial institution. As with employer-administered, qualified plans, the tax consequences would inure when an individual begins receiving benefits upon retirement.

Mr. Chairman, there are other important features of this legislation. The bill provides for improved administration by establishing an Assistant Commissioner for Exempt Organizations and Employee Benefit Plans in the Internal Revenue Service; the bill provides a new set of rules for the taxation of lump-sum distributions from qualified pension plans; the bill requires the Social Security Administration to maintain certain information about the benefits an individual has accrued under private plans, and the bill makes other changes that are improvements over existing law. With the growth of private economic security measures, as well as the tax costs attributable to these items, Congress must be more concerned about insuring that they are meeting the reasonable expectations of the working public.

I believe this bill takes a major step in this regard and deserves the support of the House.

Mr. Schneebeli. Mr. Chairman, I yield 5 minutes to the gentleman from New York (Mr. Conable) who served very valiantly and well on this committee in the consideration of this legislation.

(Mr. Conable asked and was given permission to revise and extend his remarks.)

Mr. Conable. Mr. Chairman, I would like briefly to make a reprise of what we are trying to do in this legislation, and some of the difficulties we face. Of course, our basic goal is to provide protection for working people, to prevent the kind of dissappointment that comes after a long and fruitful life of toil, to find that one does not have the retirement one expected when one went to work in the first place.

A second purpose of this bill is to spread the benefits of a tax preference which now is of assistance to roughly only half our work force. This has to be a major goal. One of the tests of tax preference is: Does it benefit a wide number of people, and does it, therefore, contribute to the benefits of a substantial enough block of citizens to justify the loss of revenue that is involved?

We have had some very obvious difficulties in putting together this somewhat disorderly package of legislation. First of all, quite obviously we have had jurisdictional problems. It has required a great deal of patience to come up with a formula which would present the Members of this body with comprehensible choices. I think we are going to have some difficulty in the amending process, and I hope all of the Members will be able to give their close attention to what the choices actually are.

A second problem arises over the diversity of our economic system itself. There are a great many different kinds of companies with a great many different types of plans, and we had to be careful in formulating this legislation that we did not in fact create serious dislocations to an already very diverse voluntary pension movement.

The third difficulty we had was that this is a voluntary movement and, therefore, there is no real necessity, outside of the collective bargaining agreements which are frequent in this area, for an employer to maintain a plan which has become too expensive for him. We have had some difficulty in the Committee on Ways and Means adjusting to this fact. We are used to legislating with respect to social security, a mandatory program, and so, of course, when we increase benefits and taxes, employers have no choice but to comply with what we have imposed on them in the way of obligations.

They do have some choice with respect to a voluntary pension plan, and while we had every desire to make it as splendid a set of protective requirements as we could, for the working people of this country, we had to be careful. If we overdid it, quite obviously we would have people writing us letters saying: "How come you helped us so much that now we have no pension plan at all because our employer has decided he cannot afford it any longer under the new rules?"

Having described these difficulties, I should like to look just briefly at what we did in title II of this bill. There were three major improvements we wanted there. First of all, we wanted to impose some reasonable limitations on corporate pensions. In fact, there are some very substantial sums of money set aside tax-free for the largest corporate pensions. We believe that we have come up with a reasonable for-

mula—the maximum defined benefit of $75,000 with a cost-of-living increase—which is certainly as liberal as anyone would wish, certainly offering no hardship to anyone, yet imposing a limitation where previously there was none.

The second thing we wanted to do was to liberalize Keogh plans, and we have gone, of course, to the $7,500 limit.

It seems to me in the interest of symmetry that we should have a cost-of-living factor added to that as well as to the corporate pension plans, and so at the appropriate time I will offer an amendment to permit the further liberlization of Keogh plans by the adding of this cost-of-living factor to the maximum that can be set under self-employment plans of this sort.

The third factor has to do with the independent retirement account, the IRA. Our friend, the gentleman from Colorado (Mr. Brotzman), can take particular credit for this provision, a Treasury recommendation, in his determination that it be added to the bill before we completed the work of the Committee on Ways and Means. I think it is a necessary addition and that it makes retirement income available to millions of people who have no voluntary pension plan, through their employment——

The CHAIRMAN. The time of the gentleman has expired.

Mr. SCHNEEBELI. Mr. Chairman, I yield 2 additional minutes to the gentleman from New York.

Mr. CONABLE. I thank the gentleman for yielding.

Thus, while it will doubtless not be used by a large number of people, because it is a voluntary device, it will be available for those who do wish to use it. We hope it will get increasing use by wage earners of modest income who now have no benefit of this sort at all.

Mr. YOUNG of Illinois. Mr. Chairman, will the gentleman yield?

Mr. CONABLE. I yield to the gentleman from Illinois.

Mr. YOUNG of Illinois. Mr. Chairman, I noted under the terms of the act we set forth clearly the vesting provisions. It is my understanding if a profit sharing plan or commitment plan meets those vesting provisions, there will no longer be the bargaining session that has hitherto taken place with IRS when a particular company seeks to qualify a plan that meets the requirements. In other words, if it meets the requirements set forth in this act, it will be acceptable.

Mr. CONABLE. I see no reason why there should be the need for bargaining with IRS after this became law. Although a plan still cannot be discriminating, the vesting options are clear.

Mr. YOUNG of Illinois. Also, for the first time in history that I know of in the Internal Revenue Code, this provides for a declaratory judgement with respect to the qualification of the plan in the event there is disagreement between the Service and the proponents of the plan. I commend the committee for that. I hope the committee will widely open that door for other types of arguments with the IRS.

There is one other thing I want to ask about. What I want to ask about is with respect to the individual retirement accounts and the provision that there can be a trustee other than a bank. I think that is very desirable, because certainly a bank cannot handle and nobody can afford to pay the bank to act as a trustee of a $1,500 retirement account, but I would assume that the language which says another person if he

satisfies the Secretary as to the proper custodianship of the assets may qualify as a trustee. I would think if the trustee will have those assets with the bank as an agency account, that certainly should satisfy the Secretary; should it not?

Mr. CONABLE. I would judge so. Of course there will be regulations under this act, but the intent certainly is to try to remove a great many of the prevailing uncertainties in the absence of legislation.

Mr. YOUNG of Illinois. If the gentleman will yield further, would it not be proper under this legislation that if a trustee would put those assets with a brokerage firm in what they call a safekeeping account, that it would be also a satisfactory custodianship of the assets?

Mr. CONABLE. I cannot tell the gentleman right offhand on that. If there were adequate safeguards for the funds involved in such an arrangement I see no reason why it could not be done.

Mr. YOUNG of Illinois. I think we would have to be careful in connection with this regulation that the regulation would not in effect make this provision which is wisely put in the law be nullified because the cost of such custodianship is too prohibitive and then there would not be any validity to the provision.

Mr. CONABLE. As the gentleman is well aware, there is a need for this type of legislation and there has been for a long time. We believe this legislation is adequately comprehensive so it will take care of most of the situations he raises. It is our intent, of course, that we contribute to a government of laws and not of men by not putting unnecessary reliance on administrative regulations hereafter. While there is some flexibility in this law, the old freedom of the IRS to exercise wide latitude in approval of plans should be considerably circumscribed.

Mr. SCHNEEBELI. I yield to a member of the committee, the gentleman from Tennessee (Mr. Duncan) such time as he may consume.

(Mr. Duncan asked and was given permission to revise and extend his remarks.)

Mr. DUNCAN. Mr. Chairman, I thank the gentleman from Pennsylvania for yielding.

I rise in support of this legislation. I think it is the very best legislation that the committee could write.

Mr. SCHNEEBELI. I yield to a member of the committee, the gentleman from Michigan (Mr. Chamberlain) such time as he may consume.

(Mr. Chamberlain asked and was given permission to revise and extend his remarks.)

Mr. CHAMBERLAIN. Mr. Chairman, I rise in support of the pension reform legislation presently under consideration. It is the product of a laborious effort by both the Education and Labor Committee and the Committee on Ways and Means.

This bill will no doubt be a landmark piece of legislation in the annals of Congress. It extends new and vital protection to workers presently under pension and profit-sharing plans by imposing new standards for participation, vesting and funding of those plans. It provides flexibility where needed so that employees will not face terminations of their plans if and when economic hardship falls on their employer. At the same time, however, it imposes meaningful penalties on employers who fail to comply with the requirements of the bill. Thus, for those employees presently covered by existing

pension plans and for those who, in the future, will be under such a plan, this legislation is vital and of great meaning.

In addition to assuring the improvement of existing plans, and increasing the protection to workers under them, who comprise roughly one-half of the work force, it also takes a major step toward equity by permitting those employees who are covered by no pension plan to set aside, tax free, up to $1,500 per year of earned income for their retirement. This is accomplished by the inclusion in the ways and means part of this bill of a provision allowing for the establishment of individual retirement accounts—IRA.

IRA, which was first proposed by the President in his April 11, 1973, pension message, will allow about 25 million "pensionless employees" to participate in the private pension system should they so desire. Let me emphasize again that this would permit these employees to set aside annually, tax free, up to $1,500 per year which would accumulate tax free until retirement age when the funds could then be withdrawn and taxed at the time of withdrawal. The IRA funds could be invested in a wide choice of funding media including bank accounts, savings and loan accounts, bank trusts, bonds and annuities. While the funds could be withdrawn at any time prior to age 59½, a penalty of 10 percent—nondeductible—would be imposed on amounts withdrawn prematurely as a deterrent to early withdrawals. Since the IRA is designed as a device for providing retirement income, this penalty is provided to help achieve this goal.

Again, IRA represents a major step toward equity. Let me explain. The reason IRA is needed if we are to be fair is that 53 percent of the work force presently does not participate in the private pension system. This group includes 64 percent of the working women and 88 percent of the employees making under $5,000 per year. It is simply not fair to make them pay taxes to help finance somebody else's pension without giving them even the right to set aside a modest sum for their own retirement. This bill would give them that right.

It should be of particiular benefit to part-time workers and women, many of whom work part time as a supplement to their husband's wages. Under the bill, each person—whether or not married—would be able to deduct up to $1,500 per year for funds deposited in an individual retirement account. For example, if an individual age 30 in 1974 began contributing $1,500 per year into an IRA, at age 65, he would have an annual pension of $4,905. Assuming he was covered by social security, he would have an income from both of these sources in his retirement years.

The effect of including the IRA provision in this legislation is that in the future every American worker will have the chance to participate in some sort of pension plan. Such a result is not only fair but necessary if we are to avoid a totally different type of social security program which would amount to a kind of negative income tax or greatly expanded and more costly welfare program for the aged. That is why IRA is so important.

Mr. Chairman, I believe this legislation is as mandatory as it is important. It contains features which should greatly improve our existing pension plan law. I urge its adoption.

Mr. SCHNEEBELI. Mr. Chairman, I yield such time as he may consume to the gentleman from Colorado, a member of the committee, who has put a lot of effort into this.

Miss JORDAN. Mr. Chairman, will the gentleman yield?

Mr. BROTZMAN. I yield to the gentlewoman from Texas.

(Miss Jordan asked and was given permission to revise and extend her remarks.)

Miss JORDAN. Mr. Chairman, the bill before us today represents the culmination of nearly 10 years of study and work to improve workers' rights in private pension plans. With the passage of meaningful pension reform legislation this Congress will be guaranteeing to covered workers that their pensions are secure and that their pensions will be available when promised and due.

Those workers who were once doomed to disappointment upon reaching retirement age, to learn that their pension would not be forthcoming, will have administrative recourse to seek a redress of their pension rights before the Federal Government. With the passage of this bill it will not be possible for pension rights to be negotiated away in company mergers, plant shutdowns, or other unanticipated developments. In addition, the minimum reserve requirements of this bill will assure workers their pension fund will not wane with every passing economic downturn. With the passage of this bill, promises of economic security at a future time to offset wage demands in the immediate future will have to be fulfilled. No long will it be possible for the pension systems of this country, with a net worth of nearly $160 billion, with tax subsidies amounting to an additional $8 billion, to continue to pay benefits to only half of those contributing to pension systems. No longer will it be in order for one half of those who receive pension benefits to receive less than $1,000 per year.

The goals of this legislation are relatively straightforward: to increase participation in pension plans, to assure participants the solvency of the pension system in which they are a member, and to guarantee to the greatest extent possible that benefits are actually paid to recipients through liberalized portability, vesting, and disclosure requirements.

(Mr. Brotzman asked and was given permission to revise and extend his remarks.)

Mr. BROTZMAN. Mr. Chairman, first may I take this opportunity to congratulate the chairman of the committee, the gentleman from Oregon (Mr. ULLMAN); the ranking member of the committee, the gentleman from Pennsylvania (Mr. SCHNEEBELI); the members of the committee and the staff, for presenting what I believe to be on balance a fine piece of legislation to the floor of this Chamber.

As has been stated, in view of the fact that the taxpayers of America invest roughly $4 billion in private pension plans, certainly it behooves the Congress to ascertain if the plans are being administered properly in the public interest.

Mr. Chairman, the pension bill, when enacted and signed into law, will be among the most significant legislation to emerge from Congress in recent years. I will restrict my remarks to that part of the bill which has been reported by the Ways and Means Committee. On balance, I believe the bill from our committee is worthy of support.

Federal legislation to encourage the development of private pension plans and set parameters for their operation is hardly a new thing. The three decades of operation under the current law have been a remarkable success. Somewhere between 23 million and 30 million Americans now enjoy private pension coverage. In 1940, only 4 million Americans were participants, and even by 1950 the figure had only grown to 9.8 million. Without any changes in Federal law it has been projected that 40 million people will be covered by private pension plans by 1980. The dramatic growth in coverage can be illustrated in other ways. Between 1950 and 1970, total annual contributions made to retirement plans by employees and employers rose from $2.1 billion to $14 billion. In 1950, 450,000 beneficiaries received $370 million from retirement plans. By 1970, 4.7 million beneficiaries were receiving $7.4 billion in pension payments.

In large measure, the growth of private retirement funds is attributable to the favorable tax treatment accorded employer and self-employed contributions to retirement plans. There presently is a revenue loss of some $4 billion by virtue of retirement plans qualifying under the provisions of the Internal Revenue Code. That being the case, even though the plans are voluntary, it is incumbent upon the Congress to assure that the beneficiaries of this revenue loss are conducting their affairs in a manner consistent with the public interest. There must be assurances that the revenue loss benefits American taxpayers in a fair and equitable manner. There must be assurances that the public purpose behind the tax reduction is being fulfilled. Stated another way, if an employer is given a tax incentive to provide pension benefits for his employees, then the public, through its elected Representatives, must see to it that the benefits are, in fact, being provided.

Despite all the progress, certain problems with regard to the current law are evident.

About one-half of all empoyees in private employment still are not covered.

There is discrimination against the self-employed. Under current law, there is no limit on what corporations can do for their executives, but self-employed persons can only deduct 10 percent of earned income up to $2,500 for their retirement plans.

In all too many instances there is not adequate vesting. A plan's vesting provision determines whether the beneficiary keeps or loses his accumulated pension benefits if he leaves the company before retirement. Once vested, he can leave and retain the right to an annuity at retirement age. Some plans permit employees to draw out vested rights in cash rather than waiting. Much of the pension reform effort centers on vesting because people change jobs from time to time and can easily end up with no pension. One-third of existing private pension plans have no vesting rights, and when the person leaves his job he loses his pension rights.

In recent years, there has been mounting evidence that in some cases, the promised benefits are illusory. At present, only one of every three employees participating in employer-financed plans has a 50 percent or greater vested right to his accrued retirement benefits. Moreover, 58 percent of covered employees between the ages of 50 and 60, and 54 percent of covered employees 60 years of age and over do not have a

qualified vested right to even 50 percent of their accrued retirement benefits.

Inadequate funding has been a problem. The end product of a pension plan is some sort of annuity that starts paying a steady income when you retire. The acquisition of that annuity may be funded with the cash value of a life insurance company contract bought for the employee when he joins the plan, by purchasing small deferred annuities each year as he builds up pension rights, by making payments to a trust that invests the money to build the sum needed for an annuity or by other methods. Many plans are not accumulating sufficient assets to pay benefits in the future to covered employees.

Pension benefits can be lost due to plan terminations. The most celebrated instance of this was when Studebaker closed its South Bend, Ind., plant in 1964. The plant closed and the pension plan was terminated. In 1972, there were 1,227 plan terminations resulting in the loss of $49 million by 19,400 pension participants in 546 of the terminated plans. The average loss to the individual was $2,500.

Finally, in spite of numerous laws, abuses continue with respect to the misuse of pension funds.

To remedy the problems I have enumerated, the Ways and Means Committee has reported a bill which would make some substantial changes in our tax laws. The bill would impose new requirements on pension funds which qualify for preferred tax treatment. Let me outline the major features.

MINIMUM PARTICIPATION STANDARDS

Generally, an employee cannot be excluded from a plan on account of age or service if he is at least 25 years old and has had at least 1 year of service. An alternative would provide for coverage after 3 years service if immediate vesting is provided.

MINIMUM VESTING STANDARDS

Three alternative minimum vesting standards are provided. The first of these provides for 25-percent vesting at the end of the 5th year of covered participation. Thereafter the vesting percentage is increased by 5 percent a year until a level of 50 percent is reached at the end of the 10th year. Following this, vesting increases at the rate of 10 percent a year until 100 percent is vested at the end of the 15th year.

The second form of vesting permitted is 100 percent vesting at the end of 10 years.

The third form of vesting is the so-called rule of 45. Under this standard, there must be 50 percent vesting when the sum of the age of the individual and the number of years of participation equals 45.

These vesting rules are phased in over a 5-year period beginning, in the case of existing plans, in 1976.

MINIMUM FUNDING STANDARDS

Normal costs are to be funded currently. Costs attributable to already-existing liabilities are to be amortized over a 40-year period. Liabilities under plan amendments and new plans generally are to be

amortized over a 30-year period, except that in the case of multiemployer plans the amortization period is to be 40 years with provision for the Secretary of Labor to extend this for a further period of 10 years. Experience gains and losses are to be amortized over 15 years generally, but in the case of multiemployer plans over a period of 20 years. In this last case, the period can be extended an additional 10 years by the Secretary of Labor. Generally, these experience gains and losses only will be required to be computed every 3 years. The above standards are based upon accrual liabilities.

If funding requirements are higher under a second general standard which is based on accrued "vested" liabilities, this standard is to apply in lieu of the rules set forth above. Under this standard, accrued vested liabilities are determined, as also are the value of the plan's assets. To the extent the former exceeds the latter, one-twentieth of this amount plus interest is to be paid in the current year. A new determination is made in each of the succeeding years.

Where any of the requirements set forth above present hardship under a plan—and certain standards are met—the Secretary of the Treasury can permit variances spreading the current liability over a 15-year period.

CONTRIBUTIONS ON BEHALF OF SELF-EMPLOYED INDIVIDUALS

This subtitle provides that the limitation on deductions for self-employed individuals is to be increased from 10 percent of self-employment income, not to exceed $2,500 up to 15 percent of self-employment income, not to exceed $7,500. A minimum of $750 may be deducted in these cases without regard to the percentage limitation.

INDIVIDUAL RETIREMENT ACCOUNTS

To me, a most important part of the bill is the section dealing with the establishment of individual retirement accounts. As you probably know, individual retirement accounts were not included in the earlier drafts of the Ways and Means Committee bill. However, thanks to the fairness of Chairman Ullman the matter was reconsidered and I was most gratified when my amendment was included in the final version.

Why was I so insistent? Because, despite the outstanding success of private pension plans, 53 percent of the American work force is not presently covered, 65 percent of the Nation's working women have no pension coverage, and 88 percent of all employees making under $5,000 per year are not covered. It simply is not fair to make these people pay taxes to finance the pensions of those who are covered without even giving them the right to set aside some modest sum for their own retirements. Yet, under current tax laws, they must bear their share of the $4 billion per year that we give up in taxes to finance the private pension system, and they have no right to set aside anything in their own behalf unless they set aside fully taxed dollars. Half of the revenue loss attributable to private pension plans goes to finance the retirement of the upper 8 percent of wage earners. The lower 50 percent of wage earners receive only 6 percent of the tax benefits.

To rectify this inequity, the pension bill, as reported by the committee, now provides that an employed individual who is not covered by a pension plan may set aside taxfree, up to $1,500 per year or 20 percent of his salary, whichever is lower, in an individual retirement account. To guard against abuse, the money set aside would have to be deposited with a responsible third party such as a bank, savings and loan, credit union, annuity program, or the like. Moreover, penalties are included for premature withdrawal. Each account could be drawn down beginning at age 59½ and withdrawals would have to commence by age 70½. To guard against utilizing individual retirement accounts for the purpose of avoiding estate taxes, each program must anticipate full withdrawal within the life expectancy of the beneficiary. An exception to the premature withdrawal rule is provided in the case of death or disability prior to retirement age.

Originally, I had hoped to have inadequately covered workers in other private pension plans eligible for participation in partial individual retirement accounts. That part of my amendment would have allowed the $1,500 annual deduction reduced by the amount of the employer's contribution to the individual's retirement fund. Unfortunately, a majority of my colleagues on the committee were unwilling to extend individual retirement opportunities that far.

Even so, I believe the amendment which did pass establishes within our tax laws an important principle. Namely, it should be the policy of the Federal Government to encourage individuals, through their employers and through their own initiative to provide for their retirements. I believe it is perfectly sound to permit people a deferred tax liability on their income for as long as the beneficial use of the income is deferred. Why not simply allow individuals the werewithal to provide for their own comfort during retirement? I believe the individual retirement accounts amendment represents major progress toward the achievement of that goal.

Mr. SCHNEEBELI, Mr. Chairman, I yield 5 minutes to the gentleman from Texas (Mr. Archer), a very capable member of the Committee.

(Mr. Archer asked and was given permission to revise and extend his remarks).

Mr. ARCHER. Mr. Chairman, we have labored long, both in the Ways and Means Committee and in the Committe on Education and Labor, this piece of legislation in an effort to protect against abuses in the mangement of pension funds and to encourage coverage for more employees by private systems. We have many problems. This is not a perfect bill, but it does include a number of excellent provisions.

Mr. Chairman, I have joined with my colleagues in attemping to work out many of the difficulties that came up as we went through our deliberations. I am particularly pleased that we have increased the H.R. 10 plan contribution limits and permit those who use them to compete, as it were, with corporate plans that we have adopted, as my colleague from Colorado (Mr. Brotzman) just told the House, the individual retirement accounts so that one-half of our people who are not covered today will have an opportunity to share in this tax deduction in providing for their retirement years.

I have been particularly concerned about the impact of this legislation on small businessmen, because most of the employees who are

not covered today by a private pension plan work for what we would call small business. Realizing this, I asked for an evaluation of this bill by the National Federation of Independent Businessmen.

Mr. Chairman, I would like to insert their critique at this point in the Record:

National Federation of Independent Business Analysis of Proposed Pension Legislation

I. INTRODUCTION

This analysis of proposed pension legislation was made by the National Federation of Independent Business with the primary objective of assessing the administrative and cost impact on small businesses.

The basic data for this analysis was obtained from the Survey of Employee Retirement Plans which was conducted by the National Federation of Independent Business in October, 1973. Data from the survey and supporting details of estimated costs are included in Section VIII.

The Survey of Employee Retirement Plans was based on a scientific random sample of all members of the National Federation of Independent Business. A total of 4,720 members in locations throughout the United States were asked to complete the survey during October, 1973. This is a 1.3% of all members and the responses are statistically representative of the 367,000 members. Eight hundred and seventy-three responses, 18%, were returned as of December, 1973.

II. MINIMUM PARTICIPATION STANDARDS

Under proposed legislation a plan shall not require, as a condition of participation, that an employee complete a period of service extending beyond the date on which he attains 25 years of age, or the date on which he completes 1 year of service, whichever is later.

It is estimated that these minimum participation standards will affect the plans of 607,000 small corporations which now exclude from their plans, based on present eligibility requirements, an average of 15 employees. If 10 of these 15 employees will be included under the proposed standards, and the average contribution for each participant is $900 a year, the small corporations will have to increase their contributions by a total of $5 billion a year. Alternatively, the contributions for present participants may be reduced to partially offset the increased costs.

Under the present regulations, a corporation may exclude from its plan those employees covered by a collective bargaining agreement if it proves to the Internal Revenue Service that the terms of its plan are not more favorable than those of the collective bargaining unit. The proposed exclusion from consideration of employees covered by a collective bargaining agreement will eliminate this problem.

III. MINIMUM VESTING STANDARDS

Under proposed legislation a plan shall provide for 100% vesting after 10 years of service; graded vesting with 25% after 5 years and 100% after 15 years; or vesting according to the "rule of 45".

It is estimated that these minimum vesting standards will affect the plans of 248,000 small corporations which have an average of 38 employees. If 33 of these employees will be included under the proposed standards, and the average contribution for each participant is $900 a year, the total contributions of these corporations will be $7.2 billion a year. This indicates that, if the reduction in forfeitures, due to the minimum vesting standards, is equal to 10% of contributions, the small corporations will have to increase their contributions by a total of $720 million a year. Alternatively, the benefits for present participants may be reduced.

IV. MINIMUM FUNDING STANDARDS

The proposed legislation provides for minimum standards for the amortization of unfunded accrued liabilities for plan benefits.

Based on the assumption that the minimum funding standards affect 25% of the plans of small corporations and would require the contributions to these

plans to be increased by 10%, the total cost is estimated to be $498 million a year. However, many corporations may not be able to afford the additional contributions and will consequently have to reduce the benefits of participants.

H.R. 2 (but not H.R. 12481) provides an important exemption from the minimum funding standards for plans which provide individual accounts for each participant and where the benefits payable at retirement are based solely upon the amount contributed to the participant's account and any accumulated investment gains or losses.

V. REGISTRATION AND REPORTS

The proposed legislation requires plans to: file an initial registration statement and report subsequent amendments; furnish participants with a plan description and annual individual statements; obtain plan termination insurance; bond all fiduciaries; file annual reports, audited by an accountant and certified by an actuary. H.R. 2 (but not H.R. 12481) provides exemptions from the annual reporting requirement for plans with under 26 participants.

More than one-half of the respondents to the N.F.I.B. Survey indicated that one reason they had not started a plan was due to the present cost of establishing, administering, and reporting to Internal Revenue Service and Department of Labor.

More than two-thirds of respondents to the N.F.I.B. Survey indicated that only one report to the federal government should be required.

The proposed registration and reporting requirements will discourage more employers from starting a plan and probably result in many existing plans being terminated. The filing of annual reports audited by an accountant and certified by an actuary is likely to cost each plan over $2,000 a year and be an impossible burden for the plans of small businesses.

The exemption of plans with less than 100 participants from the proposed requirements, especially the audit by an accountant and certification by an actuary, would be very beneficial to the encouragement of the retirement plans of small businesses.

VI. CONTRIBUTIONS ON BEHALF OF SELF-EMPLOYED INDIVIDUALS AND SHAREHOLDER-EMPLOYEES

H.R. 12481 (but not H.R. 2) proposes that the minimum tax-deductible contribution on behalf of a self-employed individual or shareholder-employee be increased to 15% of earned income with a ceiling of $7,500.

The NFIB Survey indicates that:

A. More than one-half of self-employed respondents, who do not have a retirement plan, would start a plan if the tax-deductible limit is increased to 15% of earned income, with a ceiling of $7,500. .

B. More than three-quarters of those who have a plan would increase their contributions if the tax-deductible limit is increased.

This indicates that the proposed increase in the amount of tax-deductible contributions will result in more employees receiving larger benefits from retirement plans of self-employed individuals and Subchapter S corporations.

VII. CONCLUSION

Many small corporations may not be able to afford the substantial increase in contributions required by the proposed minimum standards for participation, vesting, and funding. As a consequence they will be forced to reduce the benefits of their participating employees.

Under the present regulations, a corporation may exclude from its plan those employees covered by a collective bargaining agreement if it proves to the IRS that the terms of its plan are not more favorable than those of the collective bargaining unit. The proposed exclusion from consideration of employees covered by a collective bargaining agreement will eliminate this problem.

H.R. 12481 does not provide the important exemption from minimum funding standards for plans which provide individual accounts for each participant, where the benefits payable at retirement are based solely upon the amount contributed to the participant's account, adjusted by any accumulated investment gains or losses.

The proposed registration and reporting requirements will discourage more employers from starting a plan and probably result in many existing plans being terminated. The cost of filing annual reports audited by an accountant and

certified by an actuary will be an impossible burden for small businesses. The exemption of plans with less than 100 participants from the proposed requirements, especially the audit by an accountant and certification by an actuary, would be very beneficial to the encouragement of the retirement plans of small businesses.

The proposed increase in the amount of tax-deductible contributions on behalf of a self-employed individual or shareholder-employee will result in more employees receiving larger retirement benefits. However, the complete elimination of the discrimination in favor of the large corporations would encourage small businesses to establish more plans and reduce the number of employees who will be dependent upon Social Security and Welfare programs when they retire.

VIII. SUPPORTING DETAILS OF ESTIMATED COSTS

A. Estimate of number of corporations with plans:

1. The number of small businesses in the United States having less than 100 employees is 3.4 million based on Department of Commerce data.

2. Responses to NFIB Survey Question 1 indicate that 44% of small businesses are corporations.

3. Based on the above, there are 1.5 million small corporations in the United States.

4. Responses to NFIB Survey Question 4 indicate that 46% of corporations have retirement plans.

5. Based on the above, there are 690,000 small corporations with retirement plans. This includes plans which have not applied to IRS for approval.

B. Estimate of cost of proposed minimum participation standards:

1. Responses to NFIB Survey Question 3 indicate that corporations with retirement plans have an average of 38 employees.

2. Responses to NFIB Survey Question 5 indicate that corporations with retirement plans include an average of 23 employees in their plans.

3. The above responses indicate that coporations with retirement plans presently exclude, on an average, 15 employees due to participation requirements.

4. Assuming the average wage of participating employees is $9,000 a year and that the average contribution to retirement plans is 10%, the average amount of the contribution for each participant would be $900 a year.

5. Based on the above, a change in participation standards requiring a corporation to include one more employee in its retirement plan would cost the corporation an additional $900 a year.

6. If the change in participation standards requires a corporation to include 10 of the 15 employees presently excluded, the additional cost would be $9,000 a year.

7. It is estimated in VIII (A) above that there are 690,000 corporations with retirement plans.

8. Responses to NFIB Survey Questions 9 (a) indicates that 88 per cent of corporations with retirement plans have a participation requirement of 1 year or more.

9. Based on the above, 607,000 (88% of 690,000) corporate retirement plans would be affected by changes in participation requirements.

10. If the changes in participation standards requires a corporation to include 1 of the 15 employees presently excluded, the additional cost would be $546 million a year. If 10 more employees are required to be included, the additional cost would be $5 billion a year.

C. Estimate of the cost of minimum vesting standards:

1. Refer to paragraphs (1), (2), (3), (4) and (7) of VIII (B) above.

2. Responses to NFIB Survey Question 9 (b) indicate that corporations with retirement plans provide for 100% vesting as follows:

	Percent
Over 15 years service, no age requirements	5
Over 3 years service and attainment of age over 40	31
	36
Other service and age requirements which presently comply with the proposed vesting standards	64
	100

3. Based on the above, 248,000 (36% of 690,000) corporate retirement plans will be affected by changes in vesting requirements.

4. If the proposed changes in participation standards require a corporation to include 10 of the 15 employees presently excluded, the contribution will be $29,000 a year.

5. If the proposed changes in vesting requirements result in a reduction of forfeitures equal to 10% of contributions, a corporation with 33 participants will have to increase its contributions by $2,900 a year, and the total increase in contributions to the 248,000 corporate retirement plans will be $720 million a year.

D. Estimate of cost of minimum funding standards:

1. Refer to paragraphs (1), (2), (3), (4) and (7) of VIII (B) and paragraph (4) of VIII (C) above.

2. Based on the assumption that the minimum funding standards affect 25% of the 690,000 plans of small corporations and result in an increase in contributions of 10%, a corporation with 33 participants will have to increase its contribution by $2,900 a year and the total increase in contributions to 172,000 plans will be $498 million a year.

Mr. Chairman, one of the major reasons stated in this report for the lack of pension plans by small businessmen is the cost of administration, and one of the major problems still remaining in this bill, in my opinion, is the requirement for dual administration by both the Labor Department and the Department of the Treasury.

Such dual administration will greatly add to the cost of the administration for the small businessman.

I will at an appropriate time offer an amendment to consolidate the regulations for vesting, funding, and participation in the Treasury Department in order to eliminate a great deal of this administrative cost. I hope I will have the support of the House in this effort.

Mr. Chairman, another problem which I hope will be worked out in the bill is the provision for plan termination insurance, which, if adopted in its present language, could well force out the majority of small business-operated pension plans. I do not think that is what we want. I think we want to encourage a greater degree of pension coverage in small business, and I hope that we will be able to cure these two major problems that I see still left in the bill: the heavy administrative costs as a result of dual administration and the provisions with respect to plan termination insurance.

Mr. SCHNEEBELI. Mr. Chairman, I yield 5 minutes to the gentleman from Illinois (Mr. YOUNG).

(Mr. YOUNG of Illinois asked and was given permission to revise and extend his remarks.)

Mr. YOUNG of Illinois. Mr. Chairman, I want to thank the ranking minority member for granting me this time.

I also wish to compliment the Committee on Ways and Means for this very forward-looking piece of legislation. I think that in many ways the committee has made a major contribution to the employees of this country. In certain minor ways I think the committee may have detracted from certain employees, but on the whole the legislation is very beneficial.

In particular, I think that the provision in this legislation pertaining to the H.R. 10 plans, bringing up the benefits of those plans to permit deductions up to $7,500 per year and up to 15 percent of compensation, is a very much needed piece of legislation.

Mr. Chairman, I think the changes that the committee has made permitting persons other than banks to act as trustees of such plans is

also a very desirable piece of legislation, one which will encourage the further creation of such types of plans. The provisions permitting deductions up to $1,500 for individual retirement accounts is excellent and provides equity to persons who are not participants in qualified retirement plans.

I also think that the committee has done a very good job of eliminating some of the restrictions that were put in original bill H.R. 2 as introduced. I know that employees of Sears, Roebuck and the employees of several of the banks in my area, including the First National Bank of Chicago, were very critical of some of the provisions in H.R. 2. The proposed limitations would have eliminated some of the benefits provided for such employees.

I think that the committee's elimination of those limitations is excellent.

Mr. Chairman, I would like to state that I think this legislation deserves the support of the Members of this House. I am hopeful that we will make some changes with respect to the dual administration of the act.

I am hopeful that we will select just one agency to administer this act.

I also believe that certain of the provisions pertaining to termination insurance for defined benefit plans should be eliminated or changed. We need to amend this section to encourage the continuation of fixed contribution plans rather than discourage those plans.

Mr. Chairman, I thank the gentleman from Pennsylvania (Mr. Schneebeli) for granting me the time.

Mr. Anderson of Illinois. Mr. Chairman, I rise in support of the substitute pension reform bill presented to us by the House Ways and Means and Education and Labor Committees. The growth of the private pension plan system over the last 30 years has been dramatic. Whereas, in 1940 only 4 million employees were covered by such plans, by 1950, this had grown to 10 million, in 1960, 21 million, and today some 30 million workers are covered by these retirement plans. Nevertheless, this still represents only about one-half of the private nonfarm work force. And the hearing record on this legislation clearly indicates that there is not only a need for the expansion of coverage, but for improving the administration of plans and for protecting the rights of plan participants.

The two bills which comprise the substitute under consideration are thus aimed at these problem areas. The matters dealt with exclusively in H.R. 12906 as reported from the Education and Labor Committee, that is, title I of the substitute, include, first, plan reporting and disclosure requirements which include filing annual reports with the Secretary of Labor and providing participants with periodic descriptions of the plan; second, fiduciary standards which define the responsibilities of plan administrators as well as prohibited activities; and, third, creation of a Pension Benefit Guarantee Corp. in the Department of Labor to insure participants and beneficiaries of covered plans against loss of benefits resulting from partial or complete termination of their plans.

The matters dealt with exclusively in H.R. 12855 as reported from the Ways and Means Committee, or title II of the substitute, include,

first, limits on pension plan benefits and contributions for tax deduction purposes; second, an increase in the allowable deduction for annual contributions by the self-employed to H.R. 10 of "Keogh" plans from 10 percent of income up to $2,500, to 15 percent of income up to $7,500; third, provision for a tax deduction of the lesser of 20 percent of income or $1,500 annually for employees not covered by a plan who wish to establish their own individual retirement account; and, fourth, the treatment of lump-sum distributions as ordinary income for tax purposes, distributed over a 10-year period—except for benefits attributable to service prior to January of 1974 which would still be taxed as a capital gain.

In addition, both bills or titles of the substitute contain nearly identical provisions with respect to plan participation, vesting, and funding, the main difference being that these provisions would be administered by the Department of Labor under title I and the Department of Treasury under title II.

With respect to participation and coverage, as a rule, plans may not require, as a condition for participation, service of more than 1 year or the age of 25, whichever occurs later. An exception to this is plans which provide for 100 percent immediate vesting, in which case a 3-year minimum service condition may be required.

With respect to vesting, plans may choose one of three vesting schedules: First, 25 percent vesting after 5 years of covered service, increasing by 5 percent annually thereafter for the next 5 years, and 10 percent annually for the next 5 years, meaning 100 percent vesting would be reached by the 15th year; second, full vesting after 10 years of service; or, third, 50 percent vesting when the service plus the age of the participant equals 45, with 10 percent annual vesting over the next 5 years when 100 percent vesting would be achieved.

To absorb the costs of these new vesting standards, a 5-year transition period is allowed for all plans in existence at the beginning of this year. This vesting schedule applies retroactively, and all of an employees prior service—since the age of 25—must be taken into account, even if it includes preparticipation service. But this would not apply to service during which an employee did not make contributions to a plan or the employer did not maintain a plan. With respect to the distribution of vested benefits, plans are permitted to defer the payment of benefits to individuals with vested rights until they reach the normal retirement age and are separated from the firm. However, payments must be made not later than 60 days after the participant reaches the age of 65, or reaches the 10th anniversary of participation in the plan, or terminates service with the employer—whichever of these three events occurs later.

Both titles also require minimum funding of plans in order to insure that sufficient funds are available to meet the obligations of the plan when they fall due. Finally, provision is made for voluntary portability of vested benefits from one plan to another in situations where the old and new employer plans allow for such a transfer, and participants are allowed a tax free roll-over period for this purpose.

Mr. Chairman, in the time remaining I wish to express my position on two amendments which will be offered. I intend to support the amendment which will be offered by my colleague from Illinois (Mr. Erlenborn) to make the board of directors of the Pension Benefit

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Guarantee Corp. more representative of labor, management and public interests, and second, to provide greater safeguards against abuse of the termination insurance program.

Finally, I wish to indicate my support for the increased deduction for contributions to retirement plans for the self-employed—the so-called H.R. 10 or Keogh plans. The Rules Committee has allowed for amendments to this section, and it is my understanding that attempts will be made to either reduce or eliminate the $7,500 limitation. I am unequivocally opposed to any such amendment. The whole rationale for the increase from $2,500 to $7,500 is to put the self-employed on a comparable footing with corporate employees. One of the major thrusts of this bill is to encourage retirement savings and at the same time achieve greater tax equity. This bill accomplishes the latter by putting a limitation on deductions for corporate plans and liberalizing the deductions for the self-employed plans. At present, the self-employed are discriminated against in comparison with corporate executives and proprietary employees of corporations in regard to the tax treatment of their retirement savings. Because the existing limitation for the self-employed is so unreasonably low, an artificial incentive has been created for the incorporation of businesses which traditionally would not or should not be incorporated. The provision contained in this bill for allowing a more reasonable and realistic deduction for the self-employed retirement plan will go a long way in eliminating this incentive for incorporation by putting the self-employed on a more equal footing with corporate and proprietary employees in terms of retirement plan tax incentives. I urge the defeat of any amendments to alter the provision now contained in title II.

Mr. Rostenkowski. Mr. Chairman, the consideration of this legislation by the full House of Representatives marks the culmination of many months of extensive analysis of pension systems and their particular needs by both my Committee on Ways and Means and the Committee on Education and Labor. In addition to the members and staff of these committees, countless hours of work were devoted to this bill by the staff of the Education and Labor's pension task force and by Dr. Woodworth and his very capable staff of the Joint Committee on Internal Revenue Taxation. Their technical expertise immeasurably aided the committee in their evaluation of the alternative courses of action available to us during our consideration of this landmark legislation.

The resolution of the jurisdictional disputes inherent in legislation of this type can be credited to the determination of both the acting chairman of the Ways and Means Committee, Al Ullman, and the dedicated head of the pension task force, my colleague, John Dent. Their ability to construct a workable compromise has resulted in legislation that will hopefully tighten the tax laws and strengthen the regulatory standards applicable to both qualified and nonqualified plans.

During our deliberations in the Ways and Means Committee, our primary concern was in tightening the existing standards for qualified plans while at the same time continuing to encourage voluntary participation in such plans. As a result, the committee found it necessary

to strike a very delicate balance between what we felt companies with pension plans should do and what they were willing to do, since no employer can be compelled to offer any plan at all.

The committee was challenged with the task of strengthening existing plans without creating barriers that would unnecessarily slow the rapid increase in the establishment of private pension plans that this country has witnessed during the past 30 years.

Since the Internal Revenue Code was first amended in 1942 to encourage employers to establish pension plans which did not discrimiate as to coverage or benefits in favor of a selected few employees, the number of employees covered by these plans has increased by over 750 percent. While the tax incentives established at that time are undoubtedly responsible for the incredible growth of the system, these same incentives have been the basis of a growing number of schemes of tax avoidance in recent years. Studies have shown that in some corporations, particularly small, closely held ones with but a few highly paid employees, the incentives provided for under subchapter D of the Code were being utilized primarily to defer taxation on both corporate profits and employee salaries in amounts far in excess of what was needed to fund even the most generous of pension plans. By doing so, employees of these corporations—who are often the only stockholders, as well—would be able to defer taxation on a portion of their share of the corporate profits until they had retired and thus, would undoubtedly be in a lower tax bracket.

Confronted with this problem, the committee settled on a formula which would limit the amount of the employer's contributions to both defined benefit plan as well as to profitsharing plans, without imposing the undue restrictions on the average employees pension account that would have resulted from the Senate version of the legislation. In addition, it was necessary for the committee to resolve the problem created where the employer had established not only a defined benefit pension plan but a profitsharing plan as well. In these cases, the committee has decided to limit the employers' contributions that would qualify for the tax deferral advantages, to a percentage of the maximum allowable under both plans. In this manner, the committee has tried to put more realistic limitations on presently deferrable income without unduely restricting the pension program of those employees at the lower end of the pay scale—employees that are traditionally most adversely affected by any percentage limitations.

In addition, the Ways and Means Committee's title of this bill will also substantively reform the Federal taxation of pension accounts for not only the self-employed, but for individuals not covered by any qualified plan or Government plan, but these are aspects of the legislation that have already been described at some length by other members of this committee.

I believe that the committee bill represents a workable solution to a myriad of complex and emotional problems. It is legislation that will narrow the possibility for abuse of the tax laws in this area, while at the same time provide the opportunity to save for retirement to millions who have been unable to adequately do so in the past. I urge my colleagues to support both the inclusion of title II and final passage of the legislation itself.

Mr. CLANCY. Mr. Chairman, I should like to comment on two provisions in the pension reform legislation which I believe are of particular importance, namely, the Individual Retirement Account program and the limitation on contributions to defined contribution plans. The need for individual retirement accounts is obvious, because millions of workers today do not have the opportunity to participate in qualified pension plans. Since they do not have this option, any earnings they might derive from pension savings of their own are subject to tax and cannot be deferred until retirement, and such earnings also grow at a much slower rate than earnings on contributions in qualified plans. The Individual Retirement Accounts program will benefit low- and middle-income workers formerly without pension plan protection, and distribute tax benefits equitably among all workers.

The bill makes available a special deduction for contributions to an individual retirement annuity, or a qualified retirement bond, the maximum annual deduction being $1,500 or 20 percent of compensation, whichever is less. This tax deduction from gross income is allowed for any taxpayer even though he or she uses the standard deduction rather than itemizing. Since an individual retirement account can be established by an individual for himself, by a employer for his employees, or by a union for its members, this program will be available to a substantial group of employees not presently participating in a qualified pension plan.

Many Members may be skeptical as to whether the Individual Retirement Accounts program will be utilized to a large extent by the workers presently without pension plan coverage. It is not a question of utilization of the Individual Retirement Accounts program, but rather its availability to workers who are not presently covered by qualified pension plans and who do not receive any tax benefits on their personal retirement savings.

The pension bill also includes a provision which would limit the annual additions that could be contributed to any employee's defined contribution plan in any given year to 25 percent of compensation, not to exceed $25,000 in that year. Defined contribution plans include profit-sharing and stock bonus plans as well as money purchase and target benefit plans. The annual addition means the employer's contribution to the plan, any forfeitures during the year and the lesser of one-half of all an employee's contributions or all of an employee's contribution over 6 percent of compensation.

The bill includes this limitation on contributions in order to achieve parity between corporate qualified pension plans and H.R. 10 plans, and the limitation must be met to retain the favorable tax status accorded any plan. Additionally, this provision will achieve a measure of comparability with the limitation in the bill imposed on benefits paid under a defined benefit plan. This limitation on contributions may seem restrictive to some. However, it is our understanding that very few profit-sharing programs have contributions which approach this limitation.

In that we were dealing with the future as well as the present, I felt it necessary to amend this provision to include a cost-of-living escalator clause, and I am pleased that the committee accepted such an amendment. It is necessary that any pension reform legislation enacted

help, not hurt, the kind of pension and profit-sharing programs which have been so successful.

Mr. NIX. Mr. Chairman, I am pleased to support H.R. 2, the Employee Benefits Security Act. I am sure all of us have heard many stories of workers who have given years of dedicated service to their employers, only to find, at retirement age, that the pension plans they have participated in are worthless to them. Too often a worker who thought he would have a pension to help support him in his old age is forced to subsist on social security alone.

This situation can and will be remedied. The legislation now before us will establish reasonable standards that all private pension plans must meet. It will insure that pension plans serve the people they are supposed to serve.

Private pension plans, which were once limited to only a handful of workers, now cover more than 30 million workers. Passage of this bill will help assure that these workers, and the millions more who will join pension plans in the future, will have a fair chance at financial security in their retiremnet years.

Mr. TIERNAN. Mr. Chairman, tomorrow we will vote on a major piece of labor legislation, H.R. 2, the Employee Benefits Security Act. This bill will help to give to many retired employees the benefits they have worked so hard to obtain.

This legislation must be passed immediately. Last week I received a letter from a Rhode Island resident outlining a situation that has become all too familiar. An elderly citizen had worked for the same company for more than 32 years. Prior to his death, he had applied for pension benefits, but due to a quirk in the rules governing the administration of the plan, he received no payments. His surviving spouse was denied widows' rights even though the plan contains a "sixty-payments certain" clause. Now this elderly widow is faced with a long, grueling legal battle in order to obtain a meager pension.

It is shameful for situations like this to exist. But this is not an isolated instance. Thousands of our older citizens have already been deprived of a reasonable standard of living after retirement because the expected pension benefits, for which they had worked many years, were sharply reduced or had evaporated completely, because of business failures, relocations, termination of employment after many years of service, and even just plain mishandling of pension funds. Congress now has before it legislation that will prevent these abuses from occurring in the future, and we must pass this bill.

This legislation was carefully drafted to adequately safeguard the pensioners' rights and at the same time to avoid undue burdens that would discourage an employer from establishing new pension plans.

In the area of vesting, the employer is given three options. The 10-year service rule would provide for an automatic 100-percent vesting after 10 years of covered service. The graded 15-year service rule provides for 25-percent vesting after 5 years of covered service, increasing to 50 percent by the 10th year, and achieving 100-percent vesting by the 15th year. The rule of 45 provides for 50-percent vesting when age plus covered service equals 45, thereafter increasing in 10-percent intervals until the employee is 100-percent vested. The three vesting plans provide flexability for the employer while providing guaranteed vesting for the employee.

This bill will also correct the problem of the loss of pension rights due to bankruptcy. Two provisions work hand in hand to acquire this goal. The employer is required to make payments toward the principal of the unfunded accrued liabilities of a pension plan. Plans will also be required to insure any unfunded vested liabilities. More adequately funded plans combined with the protection of insurance will take away the danger of loss of retirement income if the employer goes bankrupt.

We must assure individuals who have spent their careers in useful and socially productive work an adequate retirement income. Of those who have worked and then left jobs with pension plans over the past 20 years, only about 5 percent will ever receive any benefits. Today, we can take a giant step forward in providing comfort for our deserving older citizens. I urge my fellow colleagues to vote in favor of this pension bill.

Mr. Burke of Florida. Mr. Chairman, I rise in support of H.R. 2, to revise the Welfare and Pension Plans Disclosure Act.

As our economy has matured, an ever increasing number of employers have recognized their responsibility for the physical and economic welfare of their employees. This development parallels the change from rural agrarian life styles to the present urbanized wage earner society.

Private pension systems have had such dynamic asset growth, that today, they influence the level of savings, the operation of our capital markets, and the relative financial security of millions of consumers.

The private pension movement in the United States proceeded slowly until the years preceding World War II. At that time the economic changes in the Nation started to be felt, and American beliefs and attitudes regarding retirement security changed. The turning point in American thinking and dissatisfaction with early pension programs was the passage of the Railroad Retirement Act and the Social Security Act. The wage freezes during World War II and the Korean conflict focused increased attention on the deferred component of compensation as a means of avoiding the freeze restrictions.

By 1940, approximately 4 million employees were covered by private pension plans; by 1950 the number had grown to 10 million; by 1960, 21 million people were covered, and the current estimate is that one half of the private nonfarm work force, or 30 million employees, are covered by these plans.

It is obvious that this expanded coverage for U.S. employees means that pensions have become big business. In fact, today, amounts in excess of $150 billion in assets are held in reserve to pay benefits credited to private plan participants.

Federal regulation of private pension systems has been minimal. There are essentially three Federal statutes presently in existence. These are the Welfare and Pension Disclosure Act, the Labor Management Relations Act, and the Internal Revenue Code.

In the absence of Federal standards, pension participants have had to rely on the traditional equitable remedies of the common law of trusts. A few States have codified existing trust principles and enacted legislation which requires, in many instances, a degree of disclosure similar to that required by Federal statute. However, the fact that statutory rules exist says little as to their efficacy in adjusting inequities suffered by plan participants. Repeatedly instances occur where

participants lose their benefits because of the manner in which the plan is executed with respect to its contractual requirements of vesting or funding as distinguished from instances where participants lose their benefits because of some violation of Federal law.

Congress has been reluctant to act due to the belief that legislation might impede plan growth. However, as a matter of equity and fair treatment, an employee covered by a pension plan should be entitled, after a reasonable period of service, to protection of his future retirement benefits against any termination of his employment.

H.R. 2 and amendments which we will consider today are designed to remedy certain defects in the private retirement system which limit the effectiveness of the system in providing retirement income security. The primary purpose of the bill is the protection of individual pension rights. I wholeheartedly support legislation which will truly protect an individual's pension rights, and I am hopeful that the House of Representatives will pass such a bill today.

It is regrettable that this type of legislation is being brought to the House in two separate packages since the combination of the two on the House floor will inevitably cause parliamentary confusion and obscure the choices to be made. H.R. 2 is designed to: First, establish equitable standards of plan administration; second, mandate minimum standards of plan administration; third, require minimum standards of fiscal responsibility by requiring the amortization of unfunded liabilities; fourth, insure the vested portion of unfunded liabilities against the risk of premature plan termination; and fifth, promote a renewed expansion of private retirement plans and increase the number of participants receiving private retirement benefits. I hope the final bill adheres to these aims. The goals of extending pension plan coverage to more working people, of assuring different categories of employees equitable pension treatment and benefits, and of protecting covered employees from loss of benefits because of bankruptcy, merger, or change of jobs, are laudable and worthy of our best efforts.

Present law places no specific limitation on the amount of deductible retirement plan contributions for corporate employees, limits deductible contributions for self-employed workers to a maximum of 10 percent of earned income or $2,500 a year, and makes no provision at all for workers not covered by any kind of qualified pension plan.

I favor a reasonable limit on the amount of deductible retirement plan contributions for corporate employees, liberalized limitations on "Keogh plans" so that self-employed individuals can have pension coverage more comparable to that accorded corporate employees, and the establishment of individual retirement accounts by the half of the work force not otherwise covered by qualified retirement plans for their own future retirement income needs.

It is my hope that the House of Representatives will be able to fashion, during the debate today, a bill which conforms to the views I have expressed above and which I will be able to support and proclaim to my constituents as a truly beneficial bill which brings order to the morass of existing private pension plans, and equitable treatment to the individual participant.

Mr. Reuss. Mr Chairman, I rise in strong support of the Education and Labor pension reform bill, H.R. 2 as amended, and in equally

strong opposition to H.R. 12855, the Ways and Means Committee pension bill.

In particular, I object to section 2001 of H.R. 12855—the section tripling the "Keogh plan" tax deduction for self-employed individuals from the current $2,500 to $7,500. This section is open to amendment under the rule, and I intend to offer an amendment tomorrow to strike the increase and keep Keogh plan deductions at their present levels.

I am anxious to see self-employed professionals get their just deserts—but no more. Let me point out the following facts:

For 10 years, self-employed individuals—mainly doctors, lawyers—have received a tax break for their retirement savings—first, a deduction of $1,250 maximum, then $2,500. In 1968, the Treasury Department included in their annual statistics of income a detailed breakdown of those who used the Keogh plan deduction. Over half of the taxpayers using the deduction had adjusted gross incomes of over $25,000—how far over the study does not show. This income puts Keogh users in the richest 5 percent of American families—not necessarily, or even probably, Rockefellers, but certainly in the fortunate upper middle income brackets.

During these years, more than half of American workers had neither qualified pension plans, nor tax-deferred retirement accounts. The 1973 Treasury figures put the exact figure at 53 percent of all workers. Included in this majority, according to the Treasury, are most low-paid workers, employees in small businesses, farmers, and fishermen.

H.R. 12855 deals with these two groups by giving self-employed professionals a $7,500 tax deduction and uncovered employees a $1,500 tax deduction. This disparity is unjustified.

Low- and moderate-income families are in greatest need of help right now. They are the ones who have suffered most under inflation and increased payroll taxes. They are the ones who spend every cent they earn on food, fuel, and housing, with maybe a small savings account for their children's education. They are the ones who need the greatest encouragement to save for retirement. If H.R. 12855 is adopted, they will have some help—a $1,500 maximum tax deduction.

The relatively wealthy Keogh plan beneficiaries spend a smaller percent of income for basic necessities. They invest in stocks—in happier days—in real estate, in hobby farms, and other tax shelters. And they have, under present law, a $2,500 maximum deduction a year for money put into a retirement account.

For the time being, the Keogh plan should be kept where it is, and a $1,500 tax deduction for uncovered employed workers enacted. Some disparity would continue to exist—but we would then have the chance to see how the new program is working before making further changes.

The argument is made that the Keogh plan deduction must be raised to prevent self-employed professionals from incorporating to take advantage of greater corporate pension benefits. This is circular reasoning. The way to prevent professionals from incorporating is to remove the incentive to incorporate—that is, to place a reasonable limit on corporate pension benefits. Instead of meeting the issue head-on, H.R. 12855 sidesteps by opening up the tax code a little further. The incentive to incorporate still exists—and taxpayers are $175 million poorer.

While H.R. 12855 ostensibly does "limit" maximum corporate benefits, it does so in such a way that few top corporate executives will notice the difference. An SEC survey of the pension benefit of the highest paid executives in private industry showed an average annuity expected after retirement of $61,000. H.R. 12855 imposes an upper limit of $75,000—which Treasury estimates could permit an annual tax-free setaside of about $35,000—hardly a drastic reduction, even for these most highly paid executives.

In short, H.R. 12855 is a haphazard, poorly coordinated, embarrassingly discriminatory hodge-podge of tax provisions. Section 2001 permits doctors and lawyers to deduct up to $7,500, section 2002 lets uncovered employees deduct up to $1,500, and section 2003 lets corporation take a deduction of up to about $35,000 for top executives; three different tax-financed living standards for three different income groups.

The only explanation of these tax disparities lies in the relative strengths of the lobbies for corporate executives, well-to-do professionals, and average workers. Not surprisingly, they have made out in about that order.

Mr. Chairman, many of us have had occasion in the past to protest the persistent use of the closed rule to prevent the House from legislating effectively on tax matters. H.R. 12855, on which the Ways and Means Committee sought and nearly got a totally closed rule, is a perfect example of the problems of that approach. Those of us who are committed to pension reform are forced to accept the unacceptable tax provisions of sections 2002 and 2003—unacceptable morally, intellectually, and economically.

The rule does permit amendment of section 2001—the Keogh plan deduction increase—and I urge all Members to support an amendment on the floor tomorrow striking the increase and keeping Keogh deductions at their present level. Such action would force the tax-writing committees to report out legislation that would give pension tax preferences on a basis that is fair and equal.

Mrs. Schroeder. Mr. Chairman, I would like to express my enthusiastic support for the two bills being offered today as substitutes to H.R. 2; H.R. 12906 and H.R. 12855. Together these bills provide a series of reforms in private pension plans to transform what has been up to now an amalgam of giant lotteries into a sensible, standardized, supervised plan of retirement income for older persons in America.

Private pension plans have assumed increasing importance in this country over the past 10 years. Today, some 30 million Americans are covered by pension plans, including nearly half of all fulltime non-government employees. Another 14 million persons are covered by government plans; this represents a 50-percent increase in one decade of persons covered by these two types of plans. The median pension payment for those retiring has doubled over this same period of time; and today these plans have an excess of $150 billion in assets. Up to now, pension plans have been characterized by gross deficiencies in organization and gross inequities in distribution of benefits. Far too many people never draw the pensions toward which they have contributed their hard earned dollars, money they had counted on, and to which they are entitled—not as a reward but as a matter of right.

The legislation before us would protect working men and women from being arbitrarily deprived of these retirement benefits by establishing minimum standards for companies offering such plans and by preserving tax advantages to encourage their participation. H.R. 12906 would establish tighter reporting and disclosure requirements to provide each participant or beneficiary with a written description of the plan and a summary of the annual financial report to be submitted to the Secretary of Labor. Members would thus be informed of their schedule of benefits, eligibility and vesting provisions, claim procedures and remedies, bases of financing, and any other plan provisions which affect their rights as employees. Fiduciaries of the plans are required to discharge their duties solely in the interest of the participants; they are prohibited from engaging in transactions purely for their own gain, directed to diversify investments so as to minimize the risk of loss to plan members, and to make available copies of the plan description and annual report to keep the public well informed.

Under this bill, a company offering a pension plan would be required to extend coverage to every employee who has reached the age of 25 and completed one year of service; employers may choose one of three plans by which to convey increments; most employees would receive 100 percent vesting after 15 years of service. Adequate funding would be required for current and prior liabilities; and a Pension Benefit Guaranty Corp. would be created to provide insurance against termination in case a company folded before its employees began to receive their benefits. Both the Labor Department and the Internal Revenue Service are authorized to enforce various aspects of the legislation; and the bill has the sanction of both criminal and civil penalties to be imposed in the event of violations.

H.R. 12855, title 11 of the substitute bill, offers identical provisions for participation and coverage, vesting, and funding. In addition, this bill would also increase the tax deduction for retirement plans of self-employed persons; limit the amount companies can set aside as part of profit sharing and money purchase pension plans; and allows individuals not covered by any qualified private or Government pension plans to deduct up to 20 percent of their earned income up to $1,500 to be set aside in a special custodial account, in a credit union, a bank, a savings and loan account, or a life insurance company, whichever they choose. It mandates automatic joint and survivor annuities unless an individual, with full knowledge of the terms of the annuity, voluntarily in writing "opts out." Finally, title 11 would require the Social Security Administration to maintain records of retirement plans in which former employees who have not yet retired have vested benefits, and to provide this information to plan participants and their beneficiaries on request. This information reserve is a major step in the direction of instituting portability of pension rights, so that a person will one day be able to transfer benefits from job to job.

The repercussions of this extensive reform will be widespread indeed; retired persons in this country will have more money to spend, enabling them to live more comfortable lives in a more self-sufficient way, and providing them with the purchasing power necessary to

contribute to the overall stability of the economy. Accumulated security plans appear to be gradually leading towards earlier retirements, enabling people to enjoy the middle and later years of their lives, exploring new ways in which to experience their leisure time. In addition, pension funds are themselves becoming a source of financial power, as a source of corporate capital and real estate investment. Finally, retirement programs will become an increasingly important component of the overall benefits package used by companies to attract and retain employees. They will provide an incentive for both union and non-union industries to formulate pension plans where none presently exist and to improve existing benefits for the worker.

While H.R. 12481 and H.R. 12855 address themselves to a number of long overdue, much needed reforms, they represent only a beginning in solving some of the problems in our private pension system, especially as that system affects women. Private pension plans have not looked kindly on women who work and then leave their jobs temporarily to give birth or to raise a family, or women who work part-time. Moreover, women generally receive less benefits than men simply because they are still discriminated against in employment and salary opportunities. We should not hesitate to do away with these inequities now.

The present pension bill provides for vesting at age 25. I would support a provision to set eligibility at age 25 or after 3 years of service, whichever occurs first. Many persons in this country begin to work upon graduation from high school, at age 18. A number of women who start to work at 18 leave the workforce for a couple of years to have children and then return—80 percent of all first births in this country occur before a woman reaches 25. If vesting is to be truly a nonforfeitable right, it should not be deferred for any arbitrary reason, particularly when this results in hardship to both blue collar workers and to working women.

While the legislation under consideration does mandate survivorship benefits to be automatic unless they are explicitly waived, I would support a plan whereby both the worker and the spouse are required to waive their rights to these benefits. Since it is a spouse who is directly affected, he or she should participate directly in the process of waiver.

Part-time employment is often a necessity for many women in this country, particularly those with family responsibilities or who are over the age of 65. One-third of all working women work only part-time or part of a year; yet, many private pension plans exclude employees whose customary employment is less than 24 hours per week. I would support a provision which would include pension credit for part-time work, reducing the baseline figure to 20 hours per week and allowing proportional credit for such employment on a pro-rata basis.

The Labor Department has declared pensions to be a form of salary; yet we know all too well, despite legislation to the contrary, that there exist gross decrepancies between male and female earning power in this country. Women are more apt to be white collar workers than men, but the jobs they hold usually pay far less than those of men. The existence of separate actuarial tables for men and women in the same jobs are discriminatory against women, for they include statistics for nonworking women and compute their figures to arrive at an average, not a median, age. The result has been that women in the same occupa-

tion as men are given a life span up to 10 years longer, a figure which is very misleading. It is imperative that we continue to fight to reverse the trend toward sex discrimination in employment by making explicit in this legislation the prohibition of such discrimination in granting benefits, implementing programs, and in any way administering the act. It is also important that we continue to give meaning to title VII of the 1964 Civil Rights Act by encouraging stronger enforcement of its provisions by the EEOC.

From board room to boiler room, working women have been deprived of financial security in this country. The patterns of employment for women are rapidly changing; let us pass legislation which both reflects these facts and protects these fundamental rights.

Mr. FRENZEL. Mr. Chairman, the measure we are considering this afternoon is one of utmost importance to the working people in this country. It is also extremely important to their employers who contribute funds into their pension plans. There are few bills which Congress will consider this year which will have such a direct effect on the well-being of both America's labor force and its management.

The bill, or rather two bills, which are before us today are the result of months of hearings by the House Education and Labor Committee and Ways and Means Committee, as well as many years of investigative hearings, studies, and legislative false starts. In spite of some of the obvious drawbacks with this legislation, and my objections to some of them, I support the bill with enthusiasm. The rule under which it is being brought to the floor is complicated, indicative of the complexity of the legislation itself, and the overlapping committee structure which conceived it. While I recognize the necessity of such a rule, I hope that we do not have to repeat it. It is confusing, unweildy, and perhaps discriminatory. Nevertheless, for the purpose of passing pension reform today, it is essential.

As far as the legislation itself goes, I support most of it. The stronger minimum standards for vesting, funding, and participation are good building blocks for future pension plan stability. Working people who rely heavily on planned pension benefits, need that stability. The provisions increasing the allowable tax deductions for contributions by self-employed individuals to their own pension plans is only fair, and I will oppose amendments to reduce the allowable deduction. The concept of allowing deductions for pension plan contributions to individuals who are neither self-employed nor covered by a regular plan is also an innovative and worthy proposal by the Ways and Means Committee, which deserves much credit for reshaping a terrible Senate bill.

The major objection to this legislation, however, is the plan termination insurance contained in the Education and Labor title.

Plan termination insurance does provide protection for workers benefits should a plan be ended. But it does not provide the employer with any incentives to prevent the plan from terminating, because the employer knows he can escape the expense. The alternative of placing the entire cost of a plan termination on the employer might risk unnecessary failures of the firms themselves through such pitfalls as the loss of credit with the banks.

The proper course lies, I believe, somewhere in between. We cannot force well-managed pension plans to bail out the failure of poorly managed ones. Neither can we ruin companies, nor stifle the incentives

to establish plans in the first place, by dumping it all on the employer. The idea of plan termination insurance obviously needs more study. We will have the basics for better and more financially sound plans with the vesting, funding, and participation standards already contained in the bill. Let us give them a chance to work while we figure out a better way to protect against plan termination. A sizable employer in my district terminated his business several years ago causing vast hardships to people already on pension, and to those who had expected and earned pensions. Termination insurance might have preserved those benefits or it might have provided disincentives so there would be no plan. Clearly we need a better proposal.

In spite of these objections, however, I intend to support the final version of the bill, unless it is substantially altered. Whatever its drawbacks, its a significant achievement in our efforts toward providing safeguards for pension plan participants, while retaining incentives to create more plans. Some experts claim we will see widespread termination of smaller plans and even some major ones, because of the additional costs. But it is surely wiser to get the basics in place, rather than let plans fail, and let participants suffer, as they have in my district recently. On balance, the bill deserves support and it will get mine.

Mr. Donohue. Mr. Chairman, I earnestly urge and hope that this pending bill, the Employee Benefit Security Act, is resoundingly approved by the House this afternoon.

The basic purpose of this measure is to remedy the defects in the prviate retirement system which greatly limit, and in some instances negate, the effectiveness of the system in providing retirement income security to millions of American workers and their families.

Today, some 30 million employees in private industry or about one-half of all workers are covered by private pension plans.

However, and unfortunately, the experience of the last 10 to 15 years very clearly reveals that, despite the frequent attempts to enforce the reporting requirement and the criminal provisions of existing laws and regulations the fact is that the individual retirement protection intended by the Congress has not yet been achieved.

This pending bill is, therefore, designed to realistically accomplish the original congressional intent. In summary, this proposal will encourage the expansion of private retirement plans and increase the number of individuals receiving retirement benefits; insure the vested portion of unfunded liabilities against the risk of premature plan termination; raise the standards of fiscal responsibility by requiring the amortization of unfunded liabilities; set up minimum standards with respect to an employee's vesting eligibility; and establish equitable standards of plan administration.

In other words, Mr. Chairman, the adoption of this bill will encourage greater worker participation and enrollment in private pension plans, require a much higher degree of fiscal responsibility and accountability by those who are managing pension funds and practically guarantee, through the termination insurance program, that every worker entitled to a pension will not be deprived of it if, by any chance, his business fails or his employer becomes bankrupt.

Mr. Chairman, the adoption of this bill will represent the extension of but simple justice to the average American worker and his

family; it will remove especially during this most distressing economic period, the average worker's haunting fear of poverty if he has to change his employment or if he should lose it after many years of diligent production, and it will serve to reestablish the trust and confidence of millions of workers that the very, very great majority of business and Government leaders are truly and fairly concerned about their personal welfare and family progress.

Mr. Chairman, by any ordinary standard of judgment, the provisions and objectives of this measure are obviously in the national interest and I very earnestly believe they merit approval by the great majority of this House.

Mr. Annunzio. Mr. Chairman, we all know that pension reform is necessary. The need is well documented and enough has already been said. Rather, I think now we should be asking ourselves whether the legislation we are considering today will provide the retirement security that this Nation's workers have been led to believe will be theirs on final passage.

I think this legislation is a giant step toward reforming the private pension system, although perhaps I am using the phrase too broadly. I would venture to say that a good number of workers will not notice or experience any significant change in the operation of their present pension plan; nor will many others wake up in the morning and suddenly find themselves participating in a pension plan. In all candor, this legislation—while of course highly significant— provides reasonable, not optimum standards. Most pension plans would already meet the participation, vesting, and funding standards called for. For instance, about 75 percent of covered workers are already permitted to start participating in their employer's plan by age 25—the age called for in the bill. Furthermore, although about 23 percent of covered workers are in plans without vesting provisions, something like four out of five workers in plans already providing some form of vesting would qualify for full vesting after 15 years of service.

The legislation before us would, however, have a noticeable and desirable effect on a significant minority of plans which have caused this legislation to be justified in the first place. What annoys me most, Mr. Chairman, is that the people who squawk the most about pension reform, are those who administer the plans which provide the least in the way of retirement security. It is with respect to these plans that the legislation is most welcomed and should have the greatest impact. The legislation will provide equity to thousands of individuals who spend their careers in useful and socially productive work, but who are unfortunately participating in plans which border on indentured servitude.

Mr. Chairman, the reason I have sponsored pension reform legislation myself stems from the years of experience that I gained as educational and legislative representative for the United Steelworkers of America after World War II and my subsequent position as director of the Illinois Department of Labor during Adlai Stevenson's governorship. I feel that I know and understand the problems of retirement security faced by our working men and women. Furthermore, I understand the importance of soundly run and administered pension plans.

I should like to point out to some of my younger colleagues that the original surge in the negotiations of pension plans came as a result of

union demands for old-age security shortly after World War II. When I was with the steelworkers in 1947, the National Labor Relations Board issued the well-known Inland Steel case ruling which made pensions part of collective bargaining. The NLRB ruling went all the way to the Supreme Court in 1949. It took a nationwide strike by the steelworkers in 1949 to establish pensions for their members. We have all come a long way since then, but we can still go a long way forward from here.

I am glad to see we are finally establishing reasonable standards for private pension plans. I am particularly glad to see that the legislation before us embodies the substance of earlier bills that I have either sponsored or cosponsored.

But the provision which I am most happy to see incorporated is the termination insurance program. As far as I am concerned, the termination insurance program will provide the backbone of confidence that our workers must have in the private pension system—just as we have confidence in the safety of our personal savings in financial institutions as a result of FDIC and FSLIC. Termination insurance will eliminate the legitimate fears of thousands of our workers that the pension plan which they so desperately depend on will not pay off at retirement. It will also put an end to the actual losses which have been experienced by about 20.000 workers a year who unfortunately find out that their pension plan is unilaterally terminated without sufficient assets to pay all benefits due.

It think it is unconscionable that an employer is presently under no legal obligation to make good on his pension promise. With the exception of collectively bargained plans, an employer can alter, modify, or terminate a pension plan at any time—and for any reason. Moreover, he generally reserves the right to suspend, reduce, or discontinue payments to the plan—whether or not previous payments have been sufficient to provide all benefits earned to date. In other words, Mr. Chairman, if the pension plan is terminated, the participants and beneficiaries can only look to the accumulated assets in the pension fund for the satisfaction of their claims. Simply stated, if the assets are insufficient. claims cannot be met in full. Is that any way to run a retirement program?

Just as with vesting, the legislation before us would insure benefits earned before as well as after the effective date. I think this is extremely important in view of the uncertain economic climate, coupled with the fact that substantial numbers of workers have already "logged-in" their working careers and cannot start over again if their plan is terminated.

Mr. Chairman, there are a few other matters which I would like to briefly stress to explain why the pension reform bill we pass must include termination insurance. The general Subcommittee on Labor hearings in Chicago focused on pension plans that were terminated with insufficient funds to pay off all pension benefits. Needless to say, it was most disheartening to hear about the hardships experienced when a worker loses his pension. Responsible pension legislation must therefore include a Federal program of plan termination insurance similar to other successful Government programs which I have already mentioned, as well as those Government programs insuring

housing mortgages, and protecting investors against difficulties experienced by brokerage houses.

Mr. Chairman, I do not feel that funding standards alone will adequately protect participants from a loss in benefits. For instance, the funding schedule called for in this legislation may not be met for any one of a number of reasons. Foremost among these may be the sheer inability of the employer to meet the funding schedule because of adverse business conditions. Furthermore, no funding standard alone could be expected to provide complete protection from the day of adoption or amendment of the plan since this would require full and immediate funding of all vested benefits. I should also add that we are being most generous in allowing present plans a period of 40 years to fund their past service liabilities. A lot can happen in 40 years to the financial well-being of any corporation, as we all know.

Lastly, Mr. Chairman, I believe we have to reserve judgment on how effective this legislation will be. While it is, of course, landmark labor legislation, its true benefits will not be known for several years to come. I am glad we have had the foresight to include several studies aimed at examining the effectiveness of the legislation. One of the chief purposes of the research studies which are mandated under the bill is to ascertain the role that private pensions play in meeting the economic security needs of the Nation. The operation of private pension plans will also be studied, including the degree of reciprocity and portability, and methods of encouraging the growth of the private pension system.

But most important, Mr. Chairman, pension reform legislation will be a reality at last.

Mr. Schneebeli. Mr. Chairman, I have no further requests for time.

Mr. Ullman. Mr. Chairman, I have no further requests for time, and I yield back the balance of my time.

Mr. Schneebeli. Mr. Chairman, I yield back the balance of my time.

The Chairman. The time of the Committee on Ways and Means has expired.

Under the rule, it shall be in order to consider, in lieu of the committee amendment now printed in the bill H.R. 2, as one amendment in the nature of a substitute for the bill H.R. 2 the text of the bill H.R. 12906 as title I of said substitute and the text of the bill H.R. 12855 as title II of said substitute. Said substitute shall be read as an original bill for the purpose of amendment under the 5-minute rule by parts instead of by sections, and title II of said substitute shall be considered as having been read for amendment.

The Clerk will now read by parts the text of the bill H.R. 12906 as title I.

The Clerk read as follows:

* * * * * * *

Mr. Dent. [during the reading]. Mr. Chairman, I ask unanimous consent that part 1 of title I be considered as read and printed in the record.

The Chairman. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

[The full text of H.R. 12906 as introduced appears on p. 2761.]

Mr. Dent. Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly the Committee rose; and the Speaker having resumed the chair, Mr. Boland, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee having had under consideration the bill (H.R. 2) to revise the Welfare and Pension Plans Disclosure Act, had come to no resolution thereon.

[From the Congressional Record—House, Feb. 27, 1974]

Employee Benefit Security Act of 1973

Mr. Dent. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 2) to revise the Welfare and Pension Plans Disclosure Act.

The motion was agreed to.

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill H.R. 2, with Mr. Boland in the chair.

The Clerk read the title of the bill.

The Chairman. When the Committee rose on yesterday, there was pending in lieu of the committee amendment now printed in the bill H.R. 2, as one amendment in the nature of a substitute for the bill H.R. 2 the text of the bill H.R. 12906 as title I of said substitute and the text of the bill H.R. 12855 as title II of said substitute. Part 1 of title I of the said substitute, ending on page 73, line 17, had been considered as read.

Are there any amendments to part 1?

AMENDMENTS OFFERED BY MR. ARCHER

Mr. Archer. Mr. Chairman, I offer an amendment to part 1. It is the first of a series of amendments which will go to title I, all of which seek the same thing.

Mr. Chairman, I ask unanimous consent to offer all these amendments en bloc inasmuch as they relate to the same subject matter, and to save the Committee and the Members a great deal of time.

Mr. Chairman, in essence the amendments would bring about a consolidation of the administration as to vesting, participation and funding in the Treasury Department.

The Chairman. Is there objection to the request of the gentleman from Texas?

Mr. Dent. Mr. Chairman, reserving the right to object, if the ranking minority Member will give me his attention, I have no objection to taking the amendments en bloc if the gentleman has no objection.

Mr. Erlenborn. Mr. Chairman, will the gentleman yield?

Mr. Dent. I will be happy to yield to the gentleman.

Mr. Erlenborn. Mr. Chairman, I have no objection to the gentleman's request.

Mr. Dent. Mr. Chairman, I withdraw my reservation of objection.

The Chairman. Is there objection to the request of the gentleman from Texas?

There was no objection.

The Clerk read as follows:

Amendments offered by Mr. Archer: Page 19, line 1, after "apply" insert "or sections 410, 411, and 412 of the Internal Revenue Code of 1954 apply".

Page 21, line 18, before the semicolon insert the following: or section 410(d) of the Internal Revenue Code of 1954".

Page 35, line 9, after "apply" insert ", or to which sections 410, 411, and 412 of the Internal Revenue Code of 1954 apply,".

Page 36, in line 3, after "302" insert "(or section 412 of the Internal Revenue Code of 1954)".

Page 37, in line 3, after "302" insert "(or section 412 of the Internal Revenue Code of 1954)".

Page 37, in line 5, after "302" insert "(or section 412 of the Internal Revenue Code of 1954)".

Page 37, in line 8, after "302" insert "(or section 412 of the Internal Revenue Code of 1954)".

Page 75, after line 11, insert the following:

(d) This part (other than section 204) shall not apply to any employee pension benefit plan if sections 410, 411, and 412 of the Internal Revenue Code of 1954 apply to such plan.

Page 100, in line 2, strike out "or".

Page 100, in line 6, strike out the period and insert in lieu thereof "; or".

Page 100, after line 6, insert the following:

(9) sections 410, 411, and 412 of the Internal Revenue Code of 1954 apply to such plan.

Page 126, in line 1, strike out "is" and insert in lieu thereof "to which section 412 of the Internal Revenue Code of 1954 applies or which is".

Page 126, in line 22, strike out "qualified under section 401(a)" and insert in lieu thereof "to which section 412".

Page 126, in line 23, insert the word "applies" after "1954".

Page 127, in line 22, after "203" insert "(or section 411 of the Internal Revenue Code of 1954)".

Page 137, in line 7, after "301" insert "(or section 412 of the Internal Revenue Code of 1954)".

Page 144, in line 10, insert the following before the period: "(or section 412 of the Internal Revenue Code of 1954 becomes effective by operation of section 1017(b)(2))".

Mr. Archer. Mr. Chairman, I want to explain and urge support for the amendments which I have offered, which represent a fair resolution of the problem of dual administration of pension plans inherent in the package presented in this legislation.

At the outset let me say that the offering of these amendments is in no way to be considered as a criticism of the efforts of either of the committees or their staffs to reach a reasonable compromise on this incredibly complex legislation. Both have labored diligently and in good faith to bring to this body the compromise before us. Unfortunately, it was not possible for them to agree on every point, and so in a sense they have left it to us to do the job of trying to deal with that which in the minds of many is one of the most critical aspects of this legislation.

That is, of course, the administration and enforcement of the new requirements and its cost to the pension plans in America.

We have heard about the vastness of the private pension system, that it presently covers over 30 million American workers. What has not been stressed to a sufficient degree and what is absolutely critical to any understanding of the pension system is that it is voluntary, and rightly so.

This legislation does not change that. It is not required by government at any level. It is only encouraged by them—primarily by the Federal Government through the special tax incentives that we grant

to employers who establish and contribute to private pension plans. This voluntary nature of the system means that employers can either establish a plan or not. They can either end an existing plan or continue it at reduced or increased benefits. While most of the large pension plans are union-negotiated and their establishment, maintenance, and continuance are subject to collective bargaining agreements, most of the smaller plans covering lower paid workers in less skilled jobs are not negotiated and are subject to the volition of the employer. And, as you know, the primary concern to any employer when he considers benefits for employees is cost.

As a result, it is important that as we legislate to improve this voluntary private pension system and give added benefits and protection to workers, that we not so increase the costs of these plans—particularly the non-productive administrative costs—so that employers will find it financially impossible to continue providing pension plans for their workers or will decide—because of the high costs—against establishing them in the first place. The administrative costs associated with pension plans to the small employer under present law can and do run as high as 30 and 40 percent. As we increase costs—as we do in this bill, the increases will fall heaviest on the small plans whose participants generally need the most protection.

I am told by experts in this field that dual administration can double existing costs of administration. That would mean some of the small plans in America would be facing an administrative burden of 60 to 80 percent of the cost of the plan. Obviously this is not workable and the plans will cease to continue in effect.

The problem with the pension reform package agreed to by the two committees is that it will unnecessarily and, in my view, foolishly increase the costs and administrative burdens falling on all pension plans because of the dualism of administration, standards, and enforcements it imposes. This dualism can and, I believe, will force mass terminations of existing plans and will greatly discourage the establishment of new plans for the half of the work force not presently covered by any plan. If this results, we in Congress will have achieved exactly the opposite of what pension reform was supposed to have accomplished. We will have, in effect, thrown the baby out with the bathwater.

The reason for this dualism was to satisfy the legitimate jurisdictional concerns of both committees involved. However, although the result does that, it also creates bad law and must be changed. I would like to point out here that two Senate committees faced the same confrontation during consideration of pension reform legislation in that body, and resolved it early in their efforts in a way very similar to that which will result if my amendment is adopted.

The Chairman. The time of the gentleman has expired.

(By unanimous consent, Mr. Archer was allowed to proceed for 3 additional minutes.)

Mr. Archer. My amendment is simple. It would provide that the Secretary of the Treasury would be solely responsible for the administration and enforcement of vesting, funding, and participation provisions of plans which qualify for special tax treatment under the Internal Revenue Code.

My amendment would not in any way change the responsibilities under the Education and Labor Committee's portion of the bill relating to reporting, disclosure and fiduciary standards. They have been functions carried on by the Department of Labor in the past and should continue under its province.

My amendment is simply designed to eliminate the dual enforcement and dual administration over participation, vesting and funding under the pension package in the present bill.

It is fair to ask why this kind of a sensible legislative dichotomy is not in the compromise package. I believe the answer is that both sides felt they should have the authority over the whole package, neither being willing to cede on the jurisdictional point.

The result is that both got everything, and such a situation is not only absurd, it will be disastrous to the private pension system.

There is no worthy purpose in proliferating the administration of the already complicated pension law by dual standards, dual reporting, dual bureaucracies, and dual enforcement. This dualism will harbor uncertainty about the future, will force duplicative reporting requirements on employers, and of course greatly increase the administrative costs attendant to pension plans.

Mr. Conable. Mr. Chairman, will the gentleman yield?

Mr. Archer. I yield to the gentleman from New York.

(Mr. Conable asked and was given permission to revise and extend his remarks.)

Mr. Conable. Mr. Chairman, I would like to thank the distinguished gentleman from Texas (Mr. Archer) for the initiative the gentleman has taken in bringing this amendment forward. It is an important amendment, and it is a needed amendment. The gentleman from Texas is doing a service to the House in presenting such an amendment. I hope the amendment will be agreed to by a wide margin.

Mr. Schneebeli. Mr. Chairman, will the gentleman yield?

Mr. Archer. I yield to the gentleman from Pennsylvania.

Mr. Schneebeli. Mr. Chairman, I thank the gentleman for yielding to me.

Mr. Chairman, I wish to concur in the remarks of the gentleman from New York (Mr. Conable). The amendment offered by the gentleman from Texas (Mr. Archer) is indeed a worthwhile amendment, and should have been written in the first instance, and I hope the House will support the amendment.

Mr. Winn. Mr. Chairman, will the gentleman yield?

Mr. Archer. I yield to the gentleman from Kansas.

(Mr. Winn asked and was given permission to revise and extend his remarks.)

Mr. Winn. Mr. Chairman, I rise in support of the amendment offered by the gentleman from Texas (Mr. Archer). I would like to ask the gentleman one question. Is it true that there is a difference between the enforcement between the IRS and the legislative process in this bill?

Mr. Archer. The enforcement by the IRS under the regulations will always be accomplished within the broad frame of the authority that we grant them, but the enforcement by the Department of Labor, if we continue with these combined administrative standards, could

be very much different. The interpretation by the Department of Labor could possibly be different than the same regulation as interpreted by the IRS. This too would be an intolerable situation, even if the regulations were the same, the interpretation could be and very well might be different.

Mr. WINN. There is, of course, the difference, though, is it not true, that the legislative protection that we are about to vote on today or tomorrow is taken away by the differences given to the IRS?

Mr. ARCHER. No. If you have a dual situation you can have a quagmire of controversy as to which interpretation is correct, with no solution benefiting anybody.

I think it is interesting to note that here we are trying to permit small employers to compete with big business, and that this dual situation will have just the reverse effect; the large corporations and the unions have been basically excepted by this bill. But the small employer, faced with this added protection cost of administration on their pension plans, will no longer, in my opinion, be able to compete, in many instances, with the big corporations, and the result could very well be they will be swallowed up by the big corporations, which is exactly what we do not want in this House.

The CHAIRMAN. The time of the gentleman has expired.

Mr. DENT. Mr. Chairman, I rise in opposition to the amendment offered by the gentleman from Texas (Mr. Archer).

(Mr. Dent asked and was given permission to revise and extend his remarks.)

Mr. ULLMAN. Mr. Chairman, would the gentleman yield?

Mr. DENT. I am happy to yield to the gentleman from Oregon.

Mr. ULLMAN. Mr. Chairman, I want to say that the gentleman in the well has been most cooperative in working out an arrangement with me in a very difficult matter, and one that is very complicated. And while I fully respect the views of my friend, the gentleman from Texas (Mr. Archer) and recognize, in his sincerity, the things that the gentleman believes in, I think it would be a great mistake for the House to accept this kind of an amendment that would upset what I consider to be a very fine and workable arrangement that the gentleman's committee and the Committee on Ways and Means have worked out. This really is an integral part of that understanding, and I would hope that this House would stay with us and not accept the amendment.

Mr. DENT. Mr. Chairman, I thank the gentleman from Oregon for his remarks. I think in essence they are the main reason for this whole situation. We were put into this position by the action of the other body.

There is no way in the world we can dodge our responsibility here to pass legislation in this area. If we cannot dodge that responsibility then we must accept the proposal as it was sent over from the other body, that it be a joint effort between the Committee on Ways and Means and the Committee on Education and Labor.

But there is a very good and sound reason for not accepting the amendment. One very important reason is that the reinsuring feature is contained only in that part of the bill that is under the jurisdiction of the Committee on Education and Labor, and the Department of Labor.

In order to approve plans for insurance, there have to be some minimum criteria. In this particular area that the gentleman is trying to take out of the legislation are the criteria for approval of the question of whether the fund is sound in its vesting, whether it meets the requirements of that law that is in the hands of the Department of Labor on funding. Therefore, we would take away the criteria that establishes the base for determining whether a plan can be reinsured or an optional base for a lowered rate of payment on the insurance because of the character of that particular plan itself.

Each and every plan will be judged on the question of whether they pay more for their insurance now or less.

The gentleman mentioned the added cost. I have not objected here to added cost which will be given entirely to a certain per capita charge against every participant in the fund to the Internal Revenue for its administration. We already have the machinery in the Department of Labor. There will not be, according to my information, any abnormal increase or prohibitive increase in cost for the administration in the Department of Labor.

Second, and more important—even if I come down to the basics—is this: The negotiated part of a plan negotiated between labor and management, whether that be a plan that is qualified or not qualified, is a matter of contract. We are prescribing a minimum requirement for that contract, not a maximum. Neither is the IRS restricted to these particular minimum requirements. It may, when it sees fit to do so, add some other criteria before it gives a tax deferment to some wild-eyed proposal that might come across in a non-negotiated plan, for instance, which is still qualified.

I believe that we have struck upon a formula that will endure and will give justice to every person covered by a pension plan, whether he be in a qualified or nonqualified plan. We need the criteria in our section of the bill, and that was agreed upon a long time ago. In fact, for the benefit of the sponsor of the act—and I respect his position on the thing—every member of our committee fought hard to take out of his particular section of the bill the very features that he is taking out of our section of the bill.

The CHAIRMAN. The time of the gentleman has expired.

(By unanimous consent, Mr. Dent was allowed to proceed for 1 additional minute.)

Mr. ARCHER. Mr. Chairman, will the gentleman yield for a question?

Mr. DENT. I yield to the gentleman from Texas.

Mr. ARCHER. I have no doubt as to the gentleman's sincerity in his effort to develop a good pension bill, but I do take issue with the question of the cost to the employer which in effect becomes the cost of the worker for administration. If we have in effect provided all of these fine safeguards but the cost of providing reports in complying with all of the regulations of two Federal agencies, which might and probably will be conflicting, then we have undone all the good safeguards. I should like to point out that he mentioned insurance. My amendment does not touch the question of insurance. This would stay exclusively in the Department of Labor, and that is fine.

I have no real quarrel so much as to whether the Department of Labor or the Department of the Treasury administers it, as to the fact

that it be done by one. If we can separate the functions out so that one has exclusive control over one function and another over another, we will simplify this cost.

The CHAIRMAN. The time of the gentleman from Pennsylvania has expired.

(By unanimous consent, Mr. Dent was allowed to proceed for 1 additional minute.)

Mr. DENT. Mr. Chairman, in answer I might say at the present moment both the IRS and Labor Department have supervisory powers, administrative powers, and administrative duties over all the sections on all matters dealing with pension plans. There is less duplication because we have unified the criteria under this particular act on the minimum standards.

In fact, the motion I thought the gentleman was going to make, and I would have had to reject it, was to move to take these features out of the IRS and give them to that particular part of the Government that has jurisdiction over contracts, because all of these plans come from contracts basically and if we do not have criteria to govern contracts certainly we would be in a very weak position to have criteria determining the tax deferment. I would have had to go along with the gentleman from the Ways and Means Committee because we sincerely believe that it is a dual effort and unified and ought to be operated in that manner.

(Mr. Erlenborn asked and was given permission to revise and extend his remarks.)

Mr. ERLENBORN. Mr. Chairman, I move to strike the last word.

Mr. Chairman, as I said yesterday when we were debating the rule, the acting chairman of the Ways and Means Committee and the chairman of the Education and Labor Committee, were asked by the Rules Committee to get together and resolve their differences as to jurisdiction. With the wisdom of a Solomon, they cut the baby in half and each one unhappily has half this dead child. This is no compromise.

What we have here is a ridiculous posture for this House to take: to pass in the same bill two separate laws quite similar, not identical, but quite similar in the same area and investing two different departments of the Government with the authority to see that these laws are complied with. This means the plan administrators are going to have to go to the Department of Labor to get an OK relative to the provisions on vesting and funding and then go to the Department of the Treasury and IRS where another set of bureaucrats will look at a similar law and maybe even regulations and interpret them differently. Then the Administrator will find he has not satisfied IRS and he will change the plan to satisfy IRS, and then Labor is going to be unsatisfied.

This is a prescription for utter chaos. If there is one thing we can do to discourage the future growth of private pension plans in industry, this is one of those things, to have so much paper work and conflicting jurisdiction as to discourage any employer from ever beginning a new plan; and those that are operating plans now will be sorry that they are.

I would have preferred to see primary jurisdiction in the Department of Labor. We really have no choice under this rule, working under a closed rule on title II. We could not even move to strike par-

ticipation and vesting in title II. We do not have that option. We are operating under a closed rule. That being the case, the only way we can avoid dual jurisdiction is to adopt the amendments offered by the gentleman from Texas.

I do not think that is the perfect answer, and the gentleman from Texas himself said he does not think it is the perfect answer, but it will avoid this conflict which is inherent in the bill as it is being considered now.

The gentleman says he would divide the jurisdiction this way: On tax-qualified plans the jurisdiction would be in IRS; those that are not tax qualified would be in the Department of Labor.

When we stop and think about it for a moment, however, if we are adopting the same set of regulations for the right to even operate a plan as to have a plan tax qualified, who is going to have an unqualified plan in the future? Nobody. One might as well be tax qualified and get the tax deductions as to just operate a plan which is not tax qualified. One might as well have the tax qualifications.

I think if the gentleman's amendments are adopted, all the jurisdiction ultimately will be in the IRS. There will not be anything for the Department of Labor to do because we will not have any plans; but I would rather have that than have this House appear so foolish as to adopt two sets of laws in the same area in the same bill and invest two separate departments with the same power to regulate.

That just makes no sense at all, so I think I must support the amendments offered by the gentleman from Texas.

Mr. DENT. Mr. Chairman, will the gentleman yield?

Mr. ERLENBORN. I yield to the gentleman from Pennsylvania.

Mr. DENT. If the gentleman is in support of this amendment, his assumption is that there will be no qualified plans. That is only, of course, a guess on his part. I would say there would be still many thousands of qualified plans, that over 2,000 of them exist, and if we wipe out jurisdiction from us by taking away these features, will the gentleman tell me what qualified features he would set up for a qualified plan?

Mr. ERLENBORN. I cannot imagine any wise business administrator operating a plan that is not tax qualified, if it has to meet all the same rules and regulations as a tax-qualified plan. Why would he be so foolish as not to take advantage of the tax determinations allowed under the rules of tax deduction?

I do not think there would be any unqualified plans if they were under the same set of rules.

I would urge that the amendments be adopted.

Mr. WRIGHT. Mr. Chairman, the legislation now before us is clearly one of the most important bills which will reach this floor for consideration this year. It will have far-reaching and lasting effects upon the lives of many Americans.

This bill is designed to protect the rights earned by millions of our citizens to the fruits of their labor and the reasonable expectation of a decent income on which to live after their retirement.

It has been estimated that upwards of 30 million employees were participating in private pension plans in this country in 1972 and that approximately 42 million will be involved by 1980. Pension plan assets

had a book value of $150 billion in 1972. They are expected to reach $225 billion by 1980. So what we do here today will have far-reaching ramifications.

Undoubtedly one of the saddest spectacles of our society, in fact little short of criminal neglect, is to see a conscientious American wage earner spend 20 years or more of his life in the expectation that he is laying aside something of security for his old age, only to be rudely shocked to discover that, for any one of a number of reasons, he really has nothing at all.

A traumatic example of this neglect comes to my mind from an episode in the history of my own family. In 1931, with the onset of the Great Depression, my grandfather at the age of 61 lost his employment with a large nationwide firm which he had served faithfully for 23 years. In only 2 more years he would have been eligible for retirement benefits from a pension plan operated by that company. Thrown out of work in the midst of the Depression at the age of 61, after 23 years in one job, he was unable to find other employment and had nothing—absolutely nothing—by way of vested retirement rights for his years of labor. And this, of course, was before the days of social security.

Nor was my grandfather's case in any way unique. All those with 20 years or more of service to this company were summarily discharged in that massive reduction in force. The company apparently had deliberately chosen to dismiss those with the longest service as a means of avoiding the payment of retirement benefits.

Fortunately, most of American industry today is more humane and less cruelly oblivious to the rights and feelings of its employees than many of its forerunners were in that earlier period.

But examples of this type of criminal neglect still occur. The Studebaker case is one of the most prominent examples. When Studebaker closed its South Bend, Ind., plant in 1964, the employees were separated and the pension plan was terminated. Many—including some who presumably had vested rights—were laid off with little or no benefits at all.

While one of the most celebrated cases, the Studebacker case is far from an isolated incident. According to the Department of Labor, there were 1,227 terminations of pension plans in 1972 alone. A joint study by the Treasury Department and the Labor Department indicates that these terminations probably resulted in the loss of some $49 million of benefits by 19,400 pension participants.

What I am saying should not be misinterpreted as a blanket criticism of private pension plans. Most of them, happily, are sound. A great many of them do a truly excellent job of providing the retired worker with the income for which he has jointly paid with his employer and to which he has looked forward. Private pension plans should by all means be encouraged, not discouraged.

Nevertheless, a study of the wide gamut of such plans as they exist today has revealed a number of deficiencies. I seriously doubt that there is any Member of this House who has not received at least a few letters from dismayed, shocked—and, yes, heartbroken—constituents who relate a series of circumstances through which they have been deprived of what they thought was rightfully theirs.

Any number of inadequacies, and sometimes hidden technicalities in the plan under which they thought they had coverage, have led to a financial disaster for too many retired workers.

In the aerospace industry, for example, it is not uncommon to find a highly skilled workman spending 10 or 12 years of his life in the employment of one company, only to be required by a reduction in force—a circumstance over which he has absolutely no possibility of control—to seek employment at another plant. He may work there for 8 to 10 years and then suffer a recurrence of the same fate. The result would be that a man with anywhere from 15 to 20 or in some cases 25 years of service to various companies in a given industry would end up with no guaranteed pension protection at all.

These facts of economic life argue impellingly for the adoption of certain minimum Federal guarantees to assure to our working force the benefits of vested rights and some portability of pension plan coverage.

We have been at some pains in the Congress to write laws which protect the consumer from being deceived and cheated by fradulent practices in the marketplace. How much more unconscionable—how much more irremediable to allow any American to be deprived of his retirement from the fruits of his own labor over an extended portion of his working career.

When a person is deprived of money by fraudulent packaging or advertising, he has suffered some immediate injury but one from which he can recover. When a person is deprived of the fruits of 15 or 20 years of his life, however, he has lost something which he can never recapture.

For each of these reasons, I support the move to strengthen and improve the pension rights of America's working force. We need to correct the injustices that exist. It seems to me that we owe our fellow citizens nothing less.

Mr. Biester. Mr. Chairman, I rise in strong support of the substitute to H.R. 2, the Pension Reform Act, comprised of H.R. 12906 and H.R. 12855.

Private pension plans are a rapidly growing and expanding economic reality. From coverage of 4 million employees with assets of $2.4 billion in 1940, private pension programs now cover 35 million workers with assets of $150 billion.

Although private retirement plans established by employers for their employees are of a voluntary nature, it has become increasingly apparent that there are fundamental problems with the present system which must be corrected if we are to protect an individual's right to the pension for which he has worked and planned.

Over the years, thousands of individuals have seen their retirement benefits disappear as a result of inadequate safeguards in their pension plans. A mechanical engineer worked 20 years for a leading electronics corporation and several other companies but never quite accumulated enough time at any one job to earn rights to each company's pension benefits. A worker for a nationwide food chain put in over 32 years with the firm, but when the company closed down the warehouse where he worked he was fired 4 years short of the company's minimum pension age and received nothing. When the Studebaker plant in South

Bend closed its doors a decade ago, pension plan participants were shocked to discover that the company had never funded their plans. Similar stories have been repeated too many times.

The private pension system represents a tremendous financial resource. Existing law in this area, minimal as it is, has not done the intended job, and it has become clear that steps must be taken to better guarantee the objectives of the private pension system. This must be accomplished without jeopardizing the ability of private programs to expand and serve more individuals.

In enacting requirements to bring deficient or potentially unsound programs to a minimally acceptable level, we should not unnecessarily impede those which are and have been performing well. The purpose of pension reform legislation, therefore, is not to inhibit or unduly restrict private plans but to insure their continued vitality and viability on a sound basis.

History and experience with private plans has indicated problems in four general areas: vesting, or granting employees a nonforfeitable right to at least a portion of their benefits; funding, or insuring the adequacy of assets for payments under the plan; fiduciary, or assuring the ethical reliability of fund managers and plan operations, and portability, or allowing pension rights to follow an employee from one job to another.

The Pension Reform Act addresses itself to these concerns. Guidelines are set forth in determining eligibility of participants, including such factors as age, years of service and interrupted service. The vesting section provides the employer three differing options from which to choose: 25 percent after 5 years plus 10 percent for each of the next 5 years—full vesting after the 15th year; full vesting after 10 years or; 50 percent vesting when the sum of age and years in covered service equals 45—with 100 percent vesting 5 years later. Covered service prior to the legislation's enactment would be taken into account in determining benefit entitlements.

Minimum funding requirements call for annual employer contributions sufficient to cover normal costs and amortization of all plan benefits. A termination insurance program is included which would protect workers against plans that partially or completely fail. Participants would be covered to a maximum of $20 monthly times the years enrolled in a plan or plans. Pension plan managers would have to meet certain minimum fiduciary standards to assure their competence and trustworthiness, and the funds themselves would have to be placed in diversified investments. Plan participants would be required to be provided with comprehensible explanations of a plan's features and its financial condition.

Provision is made for plan participants moving from one job to another who wish to transfer pension benefit credits accrued in previous employee service. Also included is an arrangement whereby self-employed individuals are encouraged to set up their own retirement plans through a system of tax incentives but with specified limits on the benefits and contributions under such a program.

In reconciling the interests and concerns of both employer and employee in this legislaton, Congress is seeking a balance which can fairly satisfy most of those involved. We should be establishing an encom-

passing program, comprehensive in scope, to cover adequately all those problems which experience tells us should be dealt with. While I support the bill now before us as a considerable improvement over the present approach, I feel it could be stronger in the protection it affords the American worker covered by its provisions. Although this measure is not a final answer to the problems of the private pension plan system, once it is enacted and we have the opportunity to observe its impact over a period of time we will be in a position to evaluate its effects and then recommend whatever changes may be warranted. We should, however, give this legislation the full opportunity to achieve its intended and necessary purposes.

The pension reform measure we pass should assure that private pension systems do what they are intended to do, and do so in a sound and businesslike manner. I believe the legislation, as reported by the two committees which considered it, can help accomplish this.

Mr. MEEDS. Mr. Chairman, for America's working people legislation to protect private pension plans is long overdue. It is perhaps our most important piece of unfinished business. For too long we have permitted tragedies in which the hope of a pension becomes a broken promise.

We, on the Education and Labor Committee, have worked many months and years to shape this legislation. Frankly, pension protection is one of the most complicated subjects ever to come before us. But there is nothing complicated to the letters which I am sure all Members of this House have received from people who, for one reason or another, were shortchanged on the pension they had been promised.

It was my honor to chair a subcommittee hearing in Seattle last April during which we took testimony from local parties concerned about pension reform. Among those who appeared were Chuck Mahlum and Farris Bryson of the Association of Western Pulp and Paper Workers. The three of us live in Everett, Wash., where a local paper mill closed in 1972. Because all the liabilities came due at once, there were insufficient assets in the pension fund to cover the several hundred employees. Workers who had served the company for 20 years got severance checks and directions on how to get to the local employment office.

With the legislation that has already been passed by the Senate and which is pending here today, we can prevent the kind of rending experiences that occurred in Everett. We can assure people that after years of faithful service they will not become throwaways.

I think our substitute bill is a wise and careful compromise. We require in-depth reporting and disclosure standards so that unions and employees will know just where they stand. We require itemized accounts of assets, receipts, disbursements, loans, leases, and other important information. The fiduciary is required to diversify holdings to minimize potential losses.

The legislations provisions on vesting are noteworthy. Followers of White House and congressional pension legislation know that a hangup has been the difference of opinion as to how soon and when an employee should be vested. So what we have done is to give participants three options. In the first option, an employee can become fully vested after 10 years of service. In the second option, he can become vested by 25 percent after 5 years, and then full vesting after 15 years.

The third option is the "rule of 45". That is, 50 percent vesting when age plus years of service equals 45, and then increasing to 100 percent by 10 percent each year.

As for eligibility, our compromise requires that a person become eligible not later than age 25 or after 1 year of service. The funding section is simple. For new plans all unfunded liabilities must be funded in 30 years and 40 years is the time schedule for existing plans.

The heart of the bill, in my view, is plan termination insurance. Pensions are deferred wages, and they are also based on the probability that a certain number of people in the pension plan will retire each year. As I said previously, the Everett situation saw all the liabilities come due at once. In our bill we establish a Pension Benefit Guaranty Corporation. All plans are required to insure unfunded vested liabilities.

We have reached a reasonable accord with the Ways and Means Committee on tax treatment of group plans and on Keogh self-employed plans.

Mr. Chairman, the people of America have been asking for this overdue legislation. They deserve it. Let us make sure that deferred wages will never be deferred permanently.

Mrs. SCHROEDER. Mr. Chairman, I would like to express my enthusiastic support for the two bills being offered today as substitutes to H.R. 2, H.R. 12906, and H.R. 12855. Together these bills provide a series of reforms in private pension plans to transform what has been up to now an amalgam of giant lotteries into a sensible, standardized, supervised plan of retirement income for older persons in America.

Private pension plans have assumed increasing importance in this country over the past 10 years. Today, some 30 million Americans are covered by pension plans, including nearly half of all full-time nongovernment employees. Another 14 million persons are covered by Government plans; this represents a 50-percent increase in one decade of persons covered by these two types of plans. The median pension payment for those retiring has doubled over this same period of time; and today these plans have an excess of $150 billion in assets. Up to now, pension plans have been characterized by gross deficiencies in organization and gross inequities in distribution of benefits. Far too many people never draw the pensions toward which they have contributed their hard-earned dollars, money they had counted on, and to which they are entitled—not as a reward but as a matter of right.

The legislation before us would protect working men and women from being arbitrarily deprived of these retirement benefits by establishing minimum standards for companies offering such plans and by preserving tax advantages to encourage their participation. H.R. 12906 would establish tighter reporting and disclosure requirements to provide each participant or beneficiary with a written description of the plan and a summary of the annual financial report to be submitted to the Secretary of Labor.

Members would thus be informed of their schedule of benefits, eligibility and vesting provisions, claim procedures and remedies, bases of financing, and any other plan provisions which affect their rights as employees. Fiduciaries of the plans are required to discharge their duties "solely in the interest of the participants"; they are prohibited from engaging in transactions purely for their own gain, directed to

diversify investments so as to minimize the risk of loss to plan members, and to make available copies of the plan description and annual report to keep the public well informed.

Under this bill, a company offering a pension plan would be required to extend coverage to every employee who has reached the age of 25 and completed 1 year of service; employers may choose one of three plans by which to convey increments; most employees would receive 100 percent vesting after 15 years of service. Adequate funding would be required for current and prior liabilities; and a Pension Benefit Guaranty Corporation would be created to provide insurance against termination in case a company folded before its employees began to receive their benefits. Both the Labor Department and the Internal Revenue Service are authorized to enforce various aspects of the legislation; and the bill has the sanction of both criminal and civil penalties to be imposed in the event of violations.

H.R. 12855, title II of the substitute bill, offers identical provisions for participation and coverage, vesting, and funding. In addition, this bill would also increase the tax deduction for retirement plans of self-employed persons; limit the amount companies can set aside as part of profit sharing and money purchase pension plans; and allows individuals not covered by any qualified private or government pension plans to deduct up to 20 percent of their earned income up to $1,500 to be set aside in a special custodial account, in a credit union, a bank, a savings and loan account, or a life insurance company, whichever they choose.

It mandates automatic joint and survivor annuities unless an individual, with full knowledge of the terms of the annuity, voluntarily in writing "opts out." Finally, title II would require the Social Security Administration to maintain records of retirement plans in which former employees who have not yet retired have vested benefits, and to provide this information to plan participants and their beneficiaries on request. This information reserve is a major step in the direction of instituting portability of pension rights, so that a person will one day be able to transfer benefits from job to job.

The repercussions of this extensive reform will be widespread indeed; retired persons in this country will have more money to spend, enabling them to live more comfortable lives in a more self-sufficient way, and providing them with the purchasing power necessary to contribute to the overall stability of the economy. Accumulated security plans appear to be gradually leading toward earlier retirements, enabling people to enjoy the middle and later years of their lives, exploring new ways in which to experience their leisure time. In addition, pension funds are themselves becoming a source of financial power, as a source of corporate capital and real estate investment. Finally, retirement programs will become an increasingly important component of the overall benefits package used by companies to attract and retain employees. They will provide an incentive for both union and nonunion industries to formulate pension plans where none presently exist and to improve existing benefits for the worker.

While H.R. 12481 and H.R. 12855 address themselves to a number of long overdue, much needed reforms, they represent only a beginning in solving some of the problems in our private pension system, especially as that system affects women. Private pension plans have

not looked kindly on women who work and then leave their jobs temporarily to give birth or to raise a family, or women who work part time. Moreover women generally receive less benefits than men simply because they are still discriminated against in employment and salary opportunities. We should not hesitate to do away with these inequities now.

The present pension bill provides for vesting at age 25. I would support a provision to set eligibility at age 25 or after 3 years of service, whichever occurs first. Many persons in this country begin to work upon graduation from high school, at age 18. A number of women who start to work at 18 leave the work force for a couple of years to have children and then return—80 percent of all first births in this country occur before a woman reaches 25. If vesting is to be truly a nonforfeitable right, it should not be deferred for any arbitrary reason, particularly when this results in hardship to both blue collar workers and to working women.

While the legislation under consideration does mandate survivorship benefits to be automatic unless they are explicitly waived, I would support a plan whereby both the worker and the spouse are required to waive their rights to these benefits. Since it is the spouse who is directly affected, he or she should participate directly in the process of waiver.

Part-time employment is often a necessity for many women in this country, particularly those with family responsibilities or who are over the age of 65. One-third of all working women work only part time or part of a year; yet, many private pension plans exclude employees whose customary employment is less than 24 hours per week. I would support a provision which would include pension credit for part-time work, reducing the baseline figure to 20 hours per week and allowing proportional credit for such employment on a pro rata basis.

The Labor Department has declared pensions to be a form of salary; yet we know all too well, despite legislation to the contrary, that there exist gross discrepancies and inequities between male and female earning power in this country. Women are more apt to be white collar workers than men, but the jobs they hold usually pay far less than those of men. The existence of separate actuarial tables for men and women in the same jobs are discriminatory against women, for they include statistics for nonworking women and compute their figures to arrive at an average, not a median, age. The result has been that women in the same occupation as men are given a life span up to 10 years longer, a figure which is very misleading. It is imperative that we continue to fight to reverse the trend toward sex discrimination in employment by making explicit in this legislation the prohibition of such discrimination in granting benefits, implementing programs, and in any way administering the act. It is also important that we continue to give meaning to title VII of the 1964 Civil Rights Act by encouraging stronger enforcement of its provisions by the EEOC.

From board room to boiler room, working women have been deprived of financial security in this country. The patterns of employment for women are rapidly changing; let us pass legislation which both reflects these facts and protects these fundamental rights.

Mr. PRICE of Illinois. Mr. Chairman, pension safeguards are becoming increasingly important as the private plans grow and increasing numbers of Americans come to depend upon them as major sources of retirement income. An estimated 25 to 30 million Americans are covered today, and their number is expected to reach 42 million by 1980. Pension plan assets now exceed $150 billion and are expected to be $225 billion by 1980. Such funds have become a major source of investment capital.

Yet there is still no law governing the management of such funds or assuring that workers will receive the pensions they have been promised, even though workers may have been contributing toward them for many years. A recent Government study shows that in 1972, there were 1,227 plans terminated involving 42,000 claimants. The total present value of the lost benefits amounted to $48.7 million for all claimants and $34.4 million for those retired, eligible for retirement, or whose rights were fully vested.

There are two outstanding examples of the situation this legislation is intended to remedy in the 23d Illinois District. The closing of the General Steel and American Zinc plants adversely affected the pensions of many workers who had not put in 30 years of service before they were terminated. All contributions to the pension fund were lost to these workers, and most were too old to find other employment but not old enough to collect Government benefits such as social security.

The impact current inadequacies in pension regulation have had in my congressional district persuaded me to become one of the original cosponsors of H.R. 2 and work for its enactment.

Under this bill, a company offering a pension plan would be required to extend coverage to every employee who has reached the age of 25 with 1 year of service. An employee's right in his pension plan would vest—that is, become legally enforceable—under one of three minimum standards: first, guaduated vesting beginning with at least 25 percent after 5 years, increasing to 100 percent after 15 years; second, 100 percent after 10 years, with nothing before that period of time; third, 50 percent when years of service and age of employee total 45, 10 percent per year over the next 5 years. Most employees would have 100-percent vesting after 15 years of service.

Adequate funding would be required for current and prior liabilities of the fund, and strict fiduciary standards would be established for persons who manage pension funds. This is to protect the fund's existence. An insurance program would be created to protect against plan termination, as well as a reporting and disclosure requirement so that information about a plan and its transactions may be monitored. Enforcement of the bill's provisions will be carried out by the Labor Department and the Internal Revenue Service.

With regard to self-employed individuals and persons working for companies without pension plans, there are provisions in the bill to improve their situation. There are provisions to increase the amount self-employed individuals can set aside and deduct for retirement purposes from 10 percent of their income up to $2,500 per year to 15 percent up to $7,500. There are also provisions to permit employees not covered by pension plans to set aside and deduct for retirement purposes 20 percent of their yearly income up to $1,500.

Mr. Chairman, I think the case for this legislation is clear, and I hope that my colleagues will vote to protect the pension rights of millions of Americans.

Mr. BOLAND. Mr. Chairman, H.R. 2, the Employee Benefit Security Act, brings before us a genuine milestone amongst all the legislation that has been or will be considered by this Congress. It will go a long way toward providing full protection for millions of American workers participating in pension plans.

I would like to commend the efforts of the distinguished chairman of the General Subcommittee on Labor of the Committee on Education and Labor (Mr. Dent) as well as those of the acting chairman of the Committee on Ways and Means (Mr. Ullman) in developing a bill which combines substantive provisions on vesting, funding, portability, termination insurance, fiduciary responsibility, and reporting requirements with tax provisions covering deductible contributions.

Mr. Chairman, some 36,000,000 American workers are presently participating in some sort of pension or retirement scheme. It is essential that comprehensive, effective protection be extended to these workers so that their penson expectations will not be eliminated by business or pension plan failures. In my district alone, two major plant closings in the last decade—those of the Westinghouse vending machine plant in Springfield and the Perkins Machine and Gear Co. facility in West Springfield, have laid bare the inadequacies of present pension regulation.

Hundreds of workers who had been employed for many years suddenly discovered that they had no vested rights to pension benefits, and that the funds upon which they had depended to supply their retirement needs were underfunded. Some have since died without a single penny of reimbursement for the many years' contributions they made. Many others cannot even draw reduced annuity payments because they are too young.

Similarly tragic cases such as these abound throughout the country. It is apparent that improved Federal standards are necessary to halt the inequities they produce.

Title I of the bill provides these options for the vesting of pension rights: full vesting after 10 years of service; 25 percent vesting after 5 years with full vesting after 15 years; and a "rule of 45" whereby a worker with 5 years of service will be 50 percent vested when his age and years of service equal 45, and 10 percent additionally vested each successive year thereafter.

In all cases, when a worker acquires a percentage vesting, he has an undisputedly clear right to benefits no matter what happens subsequently. The bill envisages the possibility of his leaving his employer or the business failing without harm to his right to some pension benefits.

Title I also assures adequate contributions to fund every plan so that it will always be able to meet its obligations. A further guarantee of this is provided by mandatory plan termination insurance, which will set up a pension insurance fund that can back up pension plans that might fail for reasons from embezzlement to business failures.

Title II of the bill concerns itself with the amounts that constitute deductible contributions to individual plans for self-employed indi-

viduals as well as to other qualified plans like profit sharing or money purchase plans. It insures that both individuals and employees covered by qualified plans will be able to receive adequate pensions upon retirement from their savings.

Mr. Chairman, I am pleased to give H.R. 2 my support. At present, only one-half of the nonagricultural work force are covered by some sort of pension plan. That section can too easily fall prey to any number of circumstances that might totally deprive them of any equity in their established fund. And for nearly all of these workers, vesting occurs only upon retirement.

This situation is entirely too chance-ridden. It must give way to enforceable standards and effective regulation. The Employee Benefit Security Act will help to encourage expansion and growth of pension plans because it sets up enforceable criteria for the management of all kinds of funds, whether existing or new. The act demands fiduciary standards from those entrusted with the operation of pension plans. Both the Labor Department and the Internal Revenue Service would administer those provisions most appropriate to their area of expertise and collaborate in those areas which require joint action. This, I believe, will satisfy both workers and employers who feel that their interests deserve representation in this crucial sector.

Mr. Chairman, this legislation is both complex and far reaching in effect. It will have a profound impact on the latter years of millions of workers. It can enable them to enjoy their retirement with dignity. I am pleased that I can so wholeheartedly endorse this bill. I urge my colleagues to join me in supporting it.

Mr. CAREY of New York. Mr. Chairman the House will vote soon on final passage of historic pension reform legislation—a joint bill produced by the House Ways and Means Committee and the House Education and Labor Committee. For the first time, the 30 million workers covered by company and union pension programs will enjoy Federal guarantees that their pension plans will provide the retirement benefits to which they look forward and have earned.

Present tax law already encourages the establishment and continuing operation of pension programs in private industry and commerce. For over 30 years, the Federal Government, through favorable tax treatment of retirement fund investments and earnings, has enabled millions of Americans to invest in their futures. Deductions are permitted to employers and employees for contributions to pension plans, plus, increases in the value of these funds are not taxable until the retired worker actually starts receiving payments from the fund—when his tax bracket is substantially lower.

By 1980, 42 million Americans will be covered by pension programs, and pension plan assets will rise from a 1972 book value of $150 billion to $225 billion by 1980. These vast sums will now be protected and will be used to maintain workers and their families in economic security after completion of their active working years.

Mr. Chairman, the House Ways and Means Committee, on which I have the honor to serve, has worked long and hard in producing title II of the composite legislation we are considering today. We have had extensive hearings on this matter and considered the bill during 33 executive sessions of the committee. I wish to salute Chairman

Mills for his leadership and commitment to pension reform legislation; our distinguished acting chairman, Congressman Ullman, for his leadership during the exhaustive, day-by-day work of the committee; and Congressman John Dent, for his continuing efforts in behalf of pension protection and reform. I also wish to salute the membership of both the committees for achieving this statesman-like jurisdictional allocation of the bill's provisions—title I to Education and Labor, and title II to Ways and Means. This itself is clear evidence of the firm commitment shared by both committees to making pension reform and pension protection a reality.

The committee has worked diligently to see that, in adding protective guarantees for pension rights, plans currently operating were not harmed. Many amendments were added to the bill to take the special needs of certain existing plans into account, while still maintaining revenue losses to the Treasury at a minimum.

Provisions in both bills for tax treatment, coverage, portability, insurance and funding represent truly landmark legislation in this vital area of insuring tens of millions of Americans with secure retirement years. I mentioned earlier the hundreds of billions of dollars that these combined funds will contain.

It is my hope that that these increasing billions will be used to provide additional badly needed mortgage money for housing. Mortgage interest rates in excess of 8 percent on a national scale have practically brought the home construction industry to a halt. This in turn has a very serious dampening effect on all the industries that service the construction, finishing, equipping and furnishing of these homes. Slack in employment is then further aggravated by decreased production, plus energy crisis unemployment.

The average worker, looking at the housing market right now, can see no way to buy a decent home for himself and his family. Housing averages approximately $30,000 for each new start, and inflationary pressures have driven the prices of other housing up at about 10 percent rate per year. What is needed badly right now is an increase of mortgage money in the private housing market.

Investment of increasing amounts of these institutional investments and portfolios in housing would permit some easing of the cost of credit in this vital area. It would provide a steady growth investment and, most appropriately, it would permit the American worker to borrow pension funds now, in order to provide decent, reasonably priced housing for his family.

Mr. Chairman, I cannot emphasize how significant this legislation is. We are taking the first step in Congress to guarantee the American worker with a certain and secure economic future. We will be looking at pension reform laws in the next several years. We will see whether deductions should be raised or lowered. We will evaluate inclusion of other types of plans in the coverage and tax deduction provisions which will be enjoyed by those coming under the protections of this pending bill.

The bill certainly does not represent nor promise utopia. Making this plan work will require a healthy, productive economy, increased investment opportunities for these funds in housing and other growth investment markets, and a commitment on the parts of both labor and

management to see this legislation work. I am confident that all these conditions will be met.

Mr. Chairman, as a member of the House Ways and Means Committee, I support and urge the passage of this bill—legislation easing the mind of the worker who fears loss of pension at retirement, encouraging labor and management to invest in the senior consuming years of retired workers, and protecting and enhancing the security represented by pension plans already in operation.

In closing, Mr. Chairman, I want to say I am pleased I was able to be of direct assistance to a number of concerned groups of workers in securing inclusion of provisions protecting and improving their present pension plans. We can all be proud of this Pension Reform Act of 1974—legislation that will prove a sound investment in America's and our own futures.

The CHAIRMAN. The question is on the amendments offered by the gentleman from Texas (Mr. Archer).

The question was taken; and the Chairman announced that the ayes appeared to have it.

RECORDED VOTE

Mr. DENT. Mr. Chairman, I demand a recorded vote.

A recorded vote was refused.

Mr. DENT. Mr. Chairman, I make the point of order that a quorum is not present.

The CHAIRMAN. The Chair will count.

Sixty-two Members are present, not a quorum. The call will be taken by electronic device.

The call was taken by electronic device, and the following Members failed to respond:

[Roll No. 50]

Addabbo	Gubser	Nichols
Baker	Hansen, Wash.	Powell, Ohio
Brasco	Holifield	Price, Tex.
Burton	Jarman	Reid
Camp	Jones, Tenn.	Roberts
Carey, N.Y.	Kluczynski	Rooney, N.Y.
Carney, Ohio	Kuykendall	Rose
Chisholm	Long, Md.	Rosenthal
Clark	Mailliard	Rostenkowski
Conyers	Martin, Nebr.	Sikes
Crane	Michel	Sullivan
Culver	Mills	Thompson, N.J.
Davis, Wis.	Minshall, Ohio	Tiernan
Dulski	Mitchell, Md.	Wiggins
Frelinghuysen	Mosher	Wilson, Charles H., Calif.
Gray	Moss	Yatron

Accordingly the Committee rose; and the Speaker pro tempore (Mr. McFall) having assumed the chair, Mr. Boland, Chairman of the Committee of the Whole House on the State of the Union, reported that that committee having had under consideration the bill H.R. 2 and finding itself without a quorum, he had directed the Members to record their presence by electronic device, when 383 Members recorded their presence, a quorum, and he submitted herewith the names of the absentees to be spread upon the Journal.

The Committee resumed its sitting.

The CHAIRMAN. For what purpose does the gentleman from Pennsylvania rise?

Mr. DENT. Mr. Chairman, I demand tellers.

PARLIAMENTARY INQUIRIES

Mr. ARCHER. Mr. Chairman, a parliamentary inquiry.

The CHAIRMAN. The gentleman will state his parliamentary inquiry.

Mr. ARCHER. Mr. Chairman, I would like to make a point of order against the request of the gentleman from Pennsylvania for a teller vote. The gentleman had sought to get a vote on the amendment, and he failed to do so, and then he asked for a quorum call. Further, the vote was announced that the ayes had it. Then the gentleman failed to be able to get a recorded vote, and when the gentleman could not get a recorded vote he then made the point of order that a quorum was not present. I would like to have us proceed in the regular order.

The CHAIRMAN (Mr. Boland). The Chair will inform the gentleman from Texas that the Committee has not passed on to other business, and the gentleman from Pennsylvania is entitled to ask for a teller vote on the amendment offered by the gentleman from Texas (Mr. Archer) but he may not ask for a recorded vote.

Mr. ARCHER. Mr. Chairman, a further parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. ARCHER. Mr. Chairman, did the gentleman not have to do that before he asked for a quorum call, and before the vote on the amendment was announced?

This appears to me highly irregular. I have been here for only 3 years, but I have never seen anything like this happen in those 3 years.

The CHAIRMAN (Mr. Boland). The Chair will state to the gentleman from Texas (Mr. Archer) that it is not highly irregular. It is not necessary to take a teller vote before a recorded vote, and the order of preference is within the discretion of the Member asking for the vote. A teller vote is now in order if the gentleman from Pennsylvania requests one, and a sufficient number of the Members of the Committee agree to his request.

PARLIAMENTARY INQUIRY

Mr. DENT. Mr. Chairman, a parliamentary inquiry.

The CHAIRMAN. The gentleman will state his parliamentary inquiry.

Mr. DENT. Mr. Chairman, is it not always in order that any Member of the House, when he suspects or believes there is not a quorum present at any point of order in the business of the House, can call for a quorum?

The CHAIRMAN (Mr. Boland). The Chair will state to the gentleman from Pennsylvania (Mr. Dent) that the gentleman has stated the general principle. The Chair again will inform the Members of the Committee that the gentleman from Pennsylvania is within his rights in demanding a teller vote, but not a recorded vote.

PARLIAMENTARY INQUIRY

Mr. DU PONT. Mr. Chairman, a parliamentary inquiry.

The CHAIRMAN. The gentleman will state his parliamentary inquiry.

Mr. DU PONT. Mr. Chairman, my parliamentary inquiry is this: Is it the ruling of the Chair that at any time following a request for a recorded vote, or a teller vote, in which a sufficient number of Members do not arise, that at any time later on in the proceedings of the House a Member is entitled to get a vote on an amendment that has been adopted on a voice vote?

The CHAIRMAN (Mr. Boland). The answer to the inquiry of the gentleman from Delaware is no; only if the Committee of the Whole House on the State of the Union has not proceeded with further business.

TELLER VOTE

Mr. DENT. Mr. Chairman, I demand tellers.

Tellers were ordered, and the Chairman appointed as tellers Mr. Archer and Mr. Dent.

The Committee again divided, and the tellers reported that there were—ayes 111, noes 158.

So the amendments were rejected.

Mr. DENT. Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly the Committee rose; and the Speaker pro tempore (Mr. McFall) having assumed the chair, Mr. Boland, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee having had under consideration the bill (H.R. 2) to revise the Welfare and Pension Plans and Disclosure Act, had come to no resolution thereon.